

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

C. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.  
Respondents.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, A.F.L., and CALIFORNIA STATE  
COUNCIL OF CANNERY UNIONS, A.F.L.,  
Intervenors.

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Transcript of Record

In Two Volumes

VOLUME II

Pages 337 to 649

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Upon Petition for Enforcement of an Order of the  
National Labor Relations Board



No. 11693

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(Testimony of Ruth Waite.)

Mr. Tobriner: Objected to.

A. No, I don't just remember.

Mr. Tobriner: Just a second.

Let it stand.

Trial Examiner Myers: You mean you withdraw your objection?

Mr. Tobriner: Withdraw the objection. She does not remember, anyway.

The Witness: Well, it said to affiliate with the Teamsters. I do remember that much.

Q. (By Mr. Jennings): Where was this letter?

A. It was out on the board on the side of the building.

Q. Bulletin board? A. Yes.

Trial Examiner Myers: Inside the plant?

The Witness: Outside the plant.

Trial Examiner Myers: What do you mean, "outside?"

The Witness: Well, there is a sort of a porch, and it was, you know, between the doors where you go in.

Trial Examiner Myers: What is it, a bulletin board?

The Witness: Yes.

Trial Examiner Myers: Where notices are posted?

The Witness: Yes.

Trial Examiner Myers: Are there any other questions?

Mr. Jennings: Nothing further.

(Testimony of Ruth Waite.)

Recross-Examination

By Mr. Tobriner:

Q. You saw that bulletin posted there which recommended that the union go into the Teamsters? You did not see anything that ordered you to go into the Teamsters, did you?

A. I don't remember how it stated, now.

Mr. Tobriner: That is all, thank you.

Mr. Edises: Mr. Examiner, for the sake of the clarity of the record, I wonder if we could have a statement from counsel on that question? I notice that the Memorandum of Agreement which is in evidence here, and the authenticity of which has not been disputed, refers to Local 22382, International Brotherhood of Teamsters, AFL.

Trial Examiner Myers: Which memorandum?

Mr. Jennings: Board's Exhibit 8. [187]

Mr. Tobriner: I must state for the record that Board's Exhibit 8, for which I am responsible in part, because I read to you over the telephone some of that, is not entirely correct. I will have to get the original document, and we will have to take it up through our witnesses tomorrow, or whenever we convene again, when I go back to the office of the union.

Trial Examiner Myers: What is the point?

Mr. Tobriner: To clarify our position.

Trial Examiner Myers: All I want to know is: Does anybody want to ask this witness any further questions?

(Testimony of Ruth Waite.)

Mr. Tobriner: No.

Mr. St. Sure: I do not.

Trial Examiner Myers: All right.

You are excused. Thank you.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, please?

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### MARGUERITE WATTS

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Marguerite Watts; Mrs. Marguerite Watts.

Trial Examiner Myers: Will you please spell your last name?

The Witness: W-a-t-t-s.

Trial Examiner Myers: Where do you live, Mrs. Watts?

The Witness: 644 East Olive, Turlock.

Trial Examiner Myers: You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Where are you employed, Mrs. Watts?

A. At the G. W. Hume Company.

(Testimony of Marguerite Watts.)

Q. How long have you been employed there?

A. I am going on my 22nd year.

Mr. St. Sure: If I might interrupt, Mr. Trial Examiner, to suggest to counsel for the Board that if the testimony he proposes to offer now is cumulative in effect, I am perfectly willing to stipulate, if he will name the witnesses he proposes to call and indicate that their testimony will be similar in character to that previously given, that it would be so considered, and it would be so testified to.

Trial Examiner Myers: Is this testimony going to be denied or rebutted by any other party?

Mr. St. Sure: I think in the main—and I will say, so far as the witness this morning that was called, Mr. Heagle, I think there will be no substantial difference in the position of the company with regard to the incidents that he related. So far as I know, while there may be some slight deviation in the testimony as to quotations of persons referred to by the last witness, I do not believe there will be any substantial difference or conflict in the story that the management will present in regard to the happenings during the period that has been testified about. That is, with regard to management participation.

With regard to the union's actions, and so forth, we are not bound, we feel, by those.

Mr. Tobriner: We are willing, if this is another witness who will testify to the same substance and events, to stipulate that her testimony would be the same in effect.

(Testimony of Marguerite Watts.)

Trial Examiner Myers: Is that going to deny any of the testimony of the former witness?

Mr. Tobriner: Not with respect to what occurred at the Hume plant. The only part of the testimony which we may want to clear up is with respect to the continuity of the existence of 22382 and the status of the union.

Trial Examiner Myers: What about that, Mr. Jennings? Do you want still to ask this witness some questions? I am assuming that this witness is going to testify to the same or similar facts.

Mr. Jennings: Yes, her testimony, Mr. Examiner, will be substantially the same as Mrs. Waite's. There would be some slight variations with respect to her particular experience, but her experience was substantially the same.

Trial Examiner Myers: What do you want to do?

Mr. Jennings: I am wondering if counsel would stipulate with me that if Mrs. Watts were to testify, her testimony would be substantially the same as that of Mrs. Ruth Waite, who has just left the witness stand?

Mr. St. Sure: Of course, if counsel will indicate that his interview with the witness would indicate that her testimony would be such, I am prepared to stipulate that it would be substantially the same.

Mr. Tobriner: It is so stipulated.

Mr. Edises: I will agree with the stipulation.

(Testimony of Marguerite Watts.)

Trial Examiner Myers: Will you make that statement, Mr. Jennings, that Mr. St. Sure wants?

Mr. Jennings: Yes.

Her statement is substantially the same as that of Mrs. Waite.

Trial Examiner Myers: Then, as I understand it, you, Mr. St. Sure, and you, Mr. Edises, and you, Mr. Tobriner, and you, Mr. Jennings, are going to stipulate that this witness would testify to substantially similar facts as were testified to by the former witness, is that correct?

Mr. St. Sure: That is correct.

Mr. Edises: That is correct.

Trial Examiner Myers: Mr. Jennings?

Mr. Jennings: So stipulated, Mr. Examiner.

Mr. Tobriner: So stipulated. [191]

Trial Examiner Myers: Very well. Then I will excuse the witness.

(Witness excused.)

Mr. Jennings: If I might, I would like to indicate the other individuals with whom I have personally talked and whose testimony would be in substance the same.

Mr. Agee: They are available here?

Mr. Jennings: There are two of them here now. I think the others are working; I am not sure.

Mr. Edises: They are on call.

Mr. Agee: Just mention those that are available.

Mr. Jennings: I have seen them in the last few days, I believe.

I am reading now from Appendix A, attached to the Complaint.

Agnes Hopkins.

Myrtle Brown, who is here. I have one question in addition to ask. We might have to put her on.

Genevieve Alsup, who is here.

Mr. Agee: How do you spell that?

Mr. Jennings: A-l-s-u-p.

I might state for the convenience of counsel that to the best of my ability, on Appendix A, I put seasonal workers over on the right and regular workers over on the left.

Mr. St. Sure: I was going to ask that question. Thank you.

Trial Examiner Myers: We will take a short recess while you are preparing the full stipulation.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready?

Mr. Jennings: Yes, I am ready.

Trial Examiner Myers: Are you ready, gentlemen?

Mr. St. Sure: Yes, sir.

Mr. Agee: Ready.

Mr. Tobriner: Ready.

Mr. Jennings: I offer a stipulation first, Mr. Examiner, as to those employees whom I have named, and ask the agreement of counsel that their testimony would be substantially the same as that of Mrs. Waite.

Mr. Agee: So stipulated.



Trial Examiner Myers: Do you so stipulate?

Mr. Edises: So stipulate.

Mr. Tobriner: I will stipulate.

Trial Examiner Myers: Do you, Mr. Jennings?

Mr. Jennings: So stipulated.

I should like to put Mrs. Brown on for just one question, if I may.

Trial Examiner Myers: Certainly.

Mr. Jennings: Myrtle Brown. [193]

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### MYRTLE BROWN

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Myrtle Brown.

Trial Examiner Myers: How do you spell your last name, please?

The Witness: B-r-o-w-n.

Trial Examiner Myers: Where do you live, Mrs. Brown?

The Witness: I live in Turlock.

Trial Examiner Myers: You may be seated, Mrs. Brown. You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Mrs. Brown, it has been stipulated here that if you were called to testify, your testimony would be substantially the same



(Testimony of Myrtle Brown.)

as that of Mrs. Waite. I just wanted to ask you one question in addition to that.

Shortly before the 20th of November, 1945, when you were told that you must clear through the A.F.L., which company official was it that spoke to you?      A. Mr. Hume.

Q. Mr. R. G. Hume?      A. Yes.

Q. Will you tell me what it was that Mr. Hume told you?

A. Well, when I was arguing about joining up, I didn't want to join, so I asked Mr. Hume, I said, "If I sign up now and work in the spring, can we, the people, have a choice to vote for which union we want here in the plant?" And he said, "Yes," he said, "If you will just string along with me until March 1st," he said, "This contract is up," and he said, "You will have a chance to vote for either union or no union at all, if you want, because," he says, "I did not want the union here in the first place, but," he said, "You people wanted a union."

Q. Thereafter you did sign a clearance?

A. I went and signed, and went back to work that very day.

Mr. Jennings: That is all.

Trial Examiner Myers: Any questions, Mr. St. Sure?

Mr. St. Sure: No questions.

Mr. Tobriner: No questions.

Trial Examiner Myers: You are excused, Mrs. Brown. Thank you.

(Witness excused.)

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: On the record.

Mr. Jennings: I should like to ask the stipulation of counsel that the following witness would give substantially the following testimony:

That Clifford C. Luther would testify that he has been employed as a seasonal worker since 1943, that he was required to sign a clearance and a dues check-off before going to work on or about the 8th of August, 1945; that he signed a revocation almost immediately thereafter; that he signed a designation for F.T.A.-C.I.O. in August of 1945; that he was told by Mr. Birchall on or about November 16th of 1945 that he had to sign a clearance and pay dues or he could not work; that on November 20th he was stopped by the picket line and did not go in to work; that on November 21st he was in front of the plant and heard Mr. Fordham state to the employees that unless they would pay dues and back dues to the A.F.L., they could not work, and that, "All of you are fired"; that when he came to work in August of 1945 he was told that he could not work until he signed a clearance and a dues check-off, by Mr. Fordham, and that when he protested he was told, "We are changing it a little"; that he thereupon went over and signed up; that he was called to work on February 7, 1946, worked 2 hours, but as he is a seasonal worker, not a regular worker, he did not work thereafter until the beginning of the spinach season, and

that the spinch season started about the 25th of March, 1946.

Mr. St. Sure: We are willing to stipulate that if the witness were called and sworn he would so testify, on the basis of Mr. Jennings' narration of his interview. [196]

The stipulations as to all of this, as I understand it, are not admissions as to the complete detail or the facts as recounted, but merely that the witness would so testify, if called.

Trial Examiner Myers: Are you going to rebut any of that testimony?

Mr. St. Sure: As I stated, Mr. Trial Examiner, there may be minor variations as to the words used and the persons quoted, but as to basic conflict, I expect that there is no basic conflict, and I believe there is none in the facts as they have been narrated. There may have been some minor variations of memory, of recollections of words used and persons talked with, but as to the events themselves, there is no basic conflict.

Mr. Tobriner: With the statement regarding the stipulation made by Mr. St. Sure, we would accept the stipulation.

Trial Examiner Myers: You, Mr. Jennings?

Mr. Jennings: So stipulated.

Trial Examiner Myers: And you, Mr. Edises?

Mr. Edises: We accept the stipulation without qualification.

Mr. St. Sure: That does not embarrass me. I will want the qualification.

Trial Examiner Myers: He accepts the whole stipulation.

If there is going to be any dispute about what this witness is going to testify, I would like to see the witness on the witness stand. It may resolve a conflict in the testimony.

Mr. Jennings: He is working.

Trial Examiner Myers: Go ahead with the next witness.

Mr. Jennings: R. E. Rearick. I offer the stipulation that if Mr. Rearick were called as a witness, he would testify that he has been employed as a seasonal worker since approximately September of 1942; that he signed a clearance and a dues check-off when he was employed on or about the 8th of August, 1945, and his clearance is in the record as A.F.L. Exhibit 1; that he was told at the plant that he had to clear with the A.F.L. before he could go to work. In that respect his testimony would be substantially the same as that of Mrs. Waite. That he was working on the 20th of November of 1945; that he attended the meeting or gathering in front of the boilerroom concerning which Mr. Heagle has testified, and of course heard the statements that were there made. An examination of the list will indicate that his name was not on the list, and he would testify, if he were asked on cross-examination, that his name was not read off by Mr. Heagle. That he came back on the 21st of November, 1945, to go to work; that he came into the yard, and he there heard Mr. Fordham tell the group who were there, including himself, "Get out of here, all of

you. You are fired;" that he thereupon left. In addition, he would testify that he signed a pledge card for F.T.A.-C.I.O. about August of 1945.

Mr. Tobriner: Mr. Jennings, when he allegedly heard the statement when he came to work on November 21st, that he would be fired or was fired, what time of the day was that, do you know? [198]

Mr. Jennings: That was in the morning, Mr. Tobriner, at the time Mr. Heagle has testified.

Mr. Tobriner: Approximately when?

Mr. Jennings: I did not ask him.

Trial Examiner Myers: He said he could not fix the time. He said it was some time during working hours.

Mr. Jennings: I can only say this: Mr. Rearick said that they came to work at 8:00 in the morning, and that this transpired, the events that Mr. Heagle testified to transpired from 8:00 o'clock on, and when Mr. Fordham made the statement they don't know.

Trial Examiner Myers: Will the parties so stipulate?

Mr. St. Sure: What is his status now, do you know? Has he returned to work? Is he a seasonal worker, or what is he? Did he work in the meantime?

Mr. Jennings: He is a seasonal worker, and as of the last time I saw him, which was yesterday morning, he was working. In other words, he has worked in spring spinach this year.

Trial Examiner Myers: Do the parties so stipulate?

Mr. St. Sure: So stipulate.

Mr. Edises: So stipulate.

Trial Examiner Myers: Mr. Tobriner?

Mr. Tobriner: There is only one thing, gentlemen. I am informed that these people did not come down to the plant until the middle of the morning, after the other people were working.

Mrs. Watts: We came down at 8:00 o'clock in the morning.

Trial Examiner Myers: That is what the man is going to testify.

Mr. Jennings: If it is disputed, Mr. Examiner, I would rather call the witness.

Mr. Tobriner: On that one point there is a question.

Mr. Jennings: The stipulation has already been entered into that the ladies who were here would testify that they came about 8:00 o'clock in the morning. If there is any dispute about that, I would certainly like to put them on.

Trial Examiner Myers: They did not go to work on the 21st, did they?

Mr. Tobriner: There is a question in my mind as to whether they appeared in time to make a showing for the job. That is, if they just came down and heard something and did not really attempt to get the job; I don't know whether they made any proper demand.

Trial Examiner Myers: Is that your contention, that Mr. Fordham said they were discharged because they did not get there on time? Is that your contention? [200]



Mr. Tobriner: No. My contention is whether they made a proper report to get the job, or whether they came and heard something and were discharged, and just left without ever demanding the job. There is that question.

Trial Examiner Myers: What were they told on the 20th?

Mr. Tobriner: Mr. Jennings, you might state that.

Mr. Jennings: On the 20th, Mr. Examiner, they would testify that there was a picket line and they could not get through.

Mr. Tobriner: They were told nothing.

Trial Examiner Myers: And on the 21st, what were they told?

Mr. Jennings: On the 21st the ladies went through the picket line. The gentlemen were stopped and did not go through, and they heard Mr. Fordham make the statement.

Mr. Tobriner: That is the point I am getting to. This R. E. Rearick is one of the gentlemen. That is right, is it not?

Mr. Jennings: Yes.

Mr. Tobriner: I think there is a question as to whether he did go down and was told that he had no job. There is a question of fact there, I think, or, whether he just was there with the group and then just assumed that he had made his showing.

Mr. Jennings: I might suggest, Mr. Examiner, that this seems to be a matter with which the company should be concerned.

Trial Examiner Myers: You had better call the witness.

Off the record.

(Discussion off the record.)

Trial Examiner Myers: Call your witness.

Mr. Jennings: Harlie Frischkneckt.

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### HARLIE FRISCHKNECKT

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Harlie Frischkneckt.

Trial Examiner Myers: Will you please spell your entire name?

The Witness: H-a-r-l-i-e F-r-i-s-c-h-k-n-e-c-k-t.

Trial Examiner Myers: Where do you live, sir?

The Witness: I live in Turlock.

Trial Examiner Myers: You may be seated, sir.

Q. (By Mr. Jennings): Where are you employed? A. G. W. Hume Company.

Q. How long have you been employed there?

A. Well, right after I got out of the Service, I started to work the 11th of April, 1945.

Q. Were you a regular worker or a seasonal worker?



(Testimony of Harlie Frischknecht.)

A. Well, I was a regular worker. I worked steady.

Q. Where were you employed? [202]

A. At the Hume Company, in the warehouse.

Q. You worked in the warehouse?

A. Yes.

Q. Prior to the time you went to work in the spring of 1945, were you required to sign an A.F.L. clearance?

A. Well, no, I went in the Service and I worked there my time off just a little bit in '44, and they never—I never had to join a union, or anything, as long as I have been in the Service, but after I got out, why, they made me join.

Q. You signed a clearance after you got out, or did you sign an application?

A. I just joined the union after I got out.

Q. When did you join the union?

A. Well, around the 11th of April, in '45.

Q. In August of '45——

Trial Examiner Myers: The 11th of April or the 11th of August?

The Witness: I think it was the 11th of April.

Trial Examiner Myers: That is the first day that you went to work with Hume after you got out of the Army?

The Witness: That is right.

Trial Examiner Myers: I thought you said August. I am sorry.

Q. (By Mr. Jennings): In August of 1945 did

(Testimony of Harlie Frischknecht.)

you attend a meeting at which you were told that you must sign another clearance with the A.F.L.?

A. Well, in August, when we reported to work, why, Mr. Granberg, the fellow in charge of the warehouse, told us that we had to get a clearance slip through the A.F.L. in order to work, and he told us to go over back to the payroll office, and they had an A.F.L. representative there who would sign us.

Q. What was his job?

A. I believe he is the Superintendent of the Warehouse.

Q. Then did you go over and sign a clearance?

A. Well, I went over there.

Trial Examiner Myers: Over where?

The Witness: Over in back of the payroll office, where this A.F.L. man was that had all the clearance slips, and I told him that I would not just sign a clearance slip, and he made me sign a payroll check-off, too. And I told him, well, I did not want to get mixed up with the Teamsters. He kind of got kind of mad. He says, "Well, you have just been listening to somebody," he says, "You haven't got a mind of your own."

I told him, "Well, all I want to do is work."

He made me sign, so I signed the payroll check-off and clearance slip, and went over and went to work.

Q. Thereafter did you sign any revocation of it?

A. Yes.

Q. How long after?

(Testimony of Harlie Frischknecht.)

A. Well, right away, I guess, some time during the same day.

Q. Did you ever sign a designation of the F.T.A.-C.I.O. pledge card?           A. Yes. [204]

Q. About when?

A. Some time in August, I think.

Q. 1945?           A. Yes.

Trial Examiner Myers: After this incident with the A.F.L. man?

The Witness: Yes.

Q. (By Mr. Jennings): On November 20th were you working, in 1945?

A. Well, we went to work—we went in and worked a couple of hours, I guess, something like that.

Q. What happened?

A. Well, they had a picket line out in front of the place, and we went on down to the warehouse and went in and went to work, and then later Mr. Hume come in and said that we was all temporarily laid off. He told us to go on outside and told us to hang around.

Q. Did he tell you why you were temporarily laid off?

A. Well, I guess because we did not pay dues to the A.F.L.

Q. Did he say?

A. I don't recall right now.

Q. Was there any discussion about boycott or anything of that sort?

(Testimony of Harlie Frischknecht.)

A. Oh, I heard a lot of talk about it, but I never paid any attention to any of it.

Q. After Mr. Hume made that statement to you, that you should hang around, what did you do?

A. Well, we stayed up there in front of the warehouse door there for a while, and noticed a bunch of them going down toward the boiler room, and I figured they were just spreading out, so I went across the street to Hume's cabin, where I lived, and just went home.

Trial Examiner Myers: Who was spreading out?

The Witness: Well, I noticed the workers were going on down toward the boiler room, some of them sitting in cars, and I just figured that part of them was going home, and I went, too.

Q. (By Mr. Jennings): Did you see Mr. Heagle after that?

A. Not Mr. Heagle, not that I remember.

Q. Did you find out whether or not your name was read off the list?

A. Well, it—I might say, the following Monday I was standing out on the sidewalk in front of the Hume Company office, and Tom here said that my name—he had the list, and he read it off, and he said my name was not on the list.

Trial Examiner Myers: Tom who?

The Witness: Birchall.

A. (Continuing): And he read it off. He had 'Harlie Crutchford,' or something, on there. [206]

Q. Cruikshank?

(Testimony of Harlie Frischknecht.)

A. Cruikshank, or something that wasn't my name, and I did not see how my name was to be on there. I had been on the payroll at Hume's office about seven or eight months, and I told the A.F.L. men my name, and they took down my name and where I worked, so if either one of them made it up, I can't see how they misspelled it that far.

Q. You did not think it was you? A. No.

Q. Did you go back to work then?

A. No. I waited around, went over there and reported for work, and they says, "All right, go to work."

I worked until some time in the morning, and the A.F.L. man come around and wanted to know if I was going to go up before a board and pay my back dues, and everything, and I talked with him there quite a while, and he said he would vouch for me if I wanted to go into the A.F.L., and I told him I would think it over, and when noon come I got to thinking about it, and I found out we would have to pay dues to the A.F.L., so I just left and never reported back to work any more, because I did not figure on paying A.F.L. dues.

Q. Who was your foreman? You say Granberg? A. Yes.

Q. Did you talk to him about this matter?

A. No, I didn't, because they told me before if we did not sign up A.F.L., we would not be able to work. [207]

Q. Who were you told that by?

(Testimony of Harlie Frischknecht.)

A. Well, it stood to reason. We was discharged when we did not sign up.

Trial Examiner Myers: What date did you say that conversation took place with the A.F.L. man about vouching for you?

The Witness: Oh, he said that if I did not go to the meeting before the board, he said he would vouch for me. That was Mr. Evans. He said he would say I was in good standing and did not spread CIO propaganda, and stuff.

Trial Examiner Myers: When?

The Witness: That was that Monday I was put back to work.

Q. (By Mr. Jennings): About the 26th of November?

A. Somewhere around in there.

Q. That was a Monday?

A. That was a Monday, the following Monday after we got discharged from Wednesday or Thursday, whatever it was.

Trial Examiner Myers: What board did he say?

The Witness: Well, he said if we went back to work we had to go before some readjustment board, or something, of the A.F.L., to see whether they wanted to let us back or whether they did not want to let us back.

Q. (By Mr. Jennings): Prior to the time that you checked out on the 26th of November, did you talk to your foreman, Mr. Granberg?

A. No, I never even checked out.

Q. Did you tell him you were checking out?

(Testimony of Harlie Frischknecht.)

A. Never even checked out; just took off.

Trial Examiner Myers: Do you know this man's name, the representative of the A.F.L.? You say he is a representative?

The Witness: Which man was that?

Trial Examiner Myers: The man who was going to vouch for you.

The Witness: Oh. That was Mr. Evans.

Trial Examiner Myers: What?

The Witness: Mr. Evans; Robert Evans.

Trial Examiner Myers: E-v-a-n-s?

The Witness: Yes.

Q. (By Mr. Jennings): On the 21st of November, did you go over to the plant with the rest of the men and try to get in to work? A. Yes.

Q. Did you succeed in getting inside the plant?

A. Well, we had it all fixed up, if they went to work at 8:00 o'clock, we decided to go down about quarter till eight. A whole bunch gathered in front of the office, went through a group outside, a bunch of people standing around, went in the inside, and some of the women got through and some of the men tried to get through, but the A.F.L. had a line across there, locked arms, and we did not get very far. [209]

Q. Did you get through?

A. Well, I got around through the side, after a scuffle.

Q. Did you see any official of the company inside?



(Testimony of Harlie Frischknecht.)

A. Well, not until they stopped—the guard there halted us, and he said that he would get an official, and Mr. Fordham come out and he told us that we did not have any job, and told us to get out.

Q. Did you leave then?

A. Yes, we left and went back in front of Hume's office.

Trial Examiner Myers: What time did Mr. Fordham make that statement?

The Witness: Well, it was in the morning. We was there at quarter to eight, and we started over around 8:00 o'clock. I don't suppose it was much over 15 after 8:00, because we were all going to be on time to go to work.

Q. (By Mr. Jennings): Do you remember anything else that Mr. Fordham said, other than what you have related?      A. No.

Q. Can you tell me why you left the plant on November 26th?

Mr. Tobriner: Objected to.

Trial Examiner Myers: Overruled.

A. Well, I left the plant because I had been telling him all the time that I wasn't going to pay A.F.L. dues, and I told him my name wasn't on the list and I did not have any reason to quit. I thought of going maybe of my own accord, but I found out the same thing, that we had to pay in order to stay there, so I did not stay.

Q. Had any company official ever told you that you had to pay dues to the A.F.L. in order to work?



(Testimony of Harlie Frischknecht.)

A. No, they never said we had to. They asked us to, but they never said we had to.

Q. Who asked you?

A. Well, I recall Mr. Hume come around and seen all of the workers in the warehouse, and he asked us to string along with him until the 1st of March, and then we could vote to take up with any union we wanted to. He did not say we had to join.

Q. On the 26th of November, did you understand that you could continue to work without paying your dues to the A.F.L.?

A. Well, I did not quite understand it that way. I thought maybe that I could go to work, but I could not see why my name was not on the list. My name, if it was on the list, I would have knew that I wouldn't be able to work without paying A.F.L. dues, but when they said my name wasn't on the list, I couldn't figure out why I was any different from anybody else. I went back to see if I could work without paying the A.F.L. dues.

Mr. Jennings: Mr. Examiner, I am somewhat embarrassed. I notice now another clerical error in the Complaint. The name of Harlie Frischknecht appears on the Charge, but was omitted through clerical mistake from Appendix A attached to the Complaint. [211]

Trial Examiner Myers: I thought he was mentioned in a separate paragraph of the Complaint.

Mr. Jennings: I believe that is correct. I take back what I said.

(Testimony of Harlie Frischknecht.)

Mr. Edises asked me about that, and I had forgotten for the moment that he was specifically named along with Mr. McVay.

Q. (By Mr. Jennings): Did you ever receive an offer to reinstate you, Mr. Frischknecht?

A. To reinstate me where?

Q. At the Hume Company.

A. To come back to work, you mean, with the rest of them?

Q. Yes.

A. I never got a notification. The rest of them got them, calling them back to work on the 7th of February, but I went back on the 7th or 8th, whichever it was.

Q. The 7th of February? A. Yes.

Q. Did you ask Mr. Hume to reinstate you?

A. No. I stood around out there to see if I could go to work, and they said the ones that had letters could work, and I started walking across the street. Mr. Montgomery come over, and he said he would find out the reason I could not work.

Trial Examiner Myers: Who is Mr. Montgomery?

The Witness: He is one of the CIO representatives.

A. (Continuing) And we went over to Mr. Hume's office, and we walked in the office, and right after we entered the door, Mr. Hume told me that I could report to the warehouse for work, so I immediately left and went to report to the warehouse.

(Testimony of Harlie Frischknecht.)

Trial Examiner Myers: You have been working there ever since?

The Witness: Yes, sir.

Q. (By Mr. Jennings): Since you have been working, has any representative of the AFL or Teamsters Union approached you with regard to joining that organization? A. Yes.

Q. During working hours? A. Yes.

Q. On how many different occasions?

A. Well, three that I know of.

Q. When?

A. Well, I work at night, and one night——

Trial Examiner Myers: He means, what dates?

The Witness: Well, I don't know.

Q. (By Mr. Jennings): Approximately what time since February 7th, about when?

A. Well, about—oh, I would say the middle of the week we first started canning spinach; somewhere around in there.

Q. That would be, then, two or three times within the last two or three weeks? [213]

A. Well, the shop steward back there has been after us, said he would kind of like to have us come over, sign over, and it was just the one time that there was any other person.

Q. When was that?

A. Well, it was just at night.

Q. How long ago was that?

A. Well, it was about in the first week of spinach, I believe it was.

(Testimony of Harlie Frischknecht.)

Q. Some time after the 25th of March?

A. Yes.

Q. Who talked to you then?

A. I don't know the man's name.

Q. Was he an employee of the plant, or an outsider?

A. No, he was an outsider.

Q. Were you working at the time?

A. Yes, I was working.

Q. What did he ask you to do?

A. Well, he asked me to sign a clearance with the AFL, and I told him, no, I did not care to sign a clearance. I understood we did not have to pay AFL dues, and I read a telegram down on a bulletin board in the warehouse, from the NLRB, or somebody, that said that all the canneries were not to associate with either union until after the new election, and I asked him about that, and he said there wasn't going to be any election, so I said, "Who is right? You or the government?"

Q. Was that all that was said?

A. Yes.

Q. Did you sign up?

A. No, I never signed up. I am still working.

Mr. Jennings: That is all.

Trial Examiner Myers: Mr. St. Sure?

### Cross-Examination

By Mr. St. Sure:

Q. Did you take any other job in the interval between the 26th of November and the 7th or 8th of February?

(Testimony of Harlie Frischknecht.)

A. Oh, I worked for a farmer, Mr. Murphy, over toward Hickman, oh, about a little over a week, something like that.

Q. Did you do any other work during the period?

A. No. Worked around home, though.

Q. How old are you?           A. 22.

Q. How much did Farmer Murphy pay you for the week?           A. How is that?

Q. How much did you earn on this farm job?

Mr. Edises: Objected to as immaterial, as a matter which would go to the question of compliance.           A. I got \$1 an hour. [215]

Mr. Edises: Just a minute.

Trial Examiner Myers: I will overrule the objection. It may be relevant for compliance, if the Board directs that it should be used.

You may go ahead.

Mr. St. Sure: I will not urge it. It is all right with me.

Trial Examiner Myers: I want you to protect yourself on the record.

Mr. St. Sure: Sometimes it is just a matter of trying to find out, and sometimes it is not easy to find out. That is the reason I asked.

Trial Examiner Myers: Go ahead.

Mr. St. Sure: That is all right.

Trial Examiner Myers: You have the answer.

The Witness: I don't remember whether I worked——

Trial Examiner Myers: How much did you get an hour?

(Testimony of Harlie Frischknecht.)

The Witness: I got \$1 an hour, and I worked 8 hours a day, I think. In total I only earned around \$50 or \$55.

Mr. St. Sure: That is all.

Trial Examiner Myers: Any other questions, Mr. St. Sure?

Mr. St. Sure: Just one other question I would like to ask.

Q. (By Mr. St. Sure): On the 26th of November, when you left, you said you did not bother to check out, just took off and left the job?

A. Well, the AFL man said if I did not pay dues to the AFL and do what they wanted me to do, I would not be able to work, and the rest of them, they had already told them they wouldn't let them work, and if they was temporarily laid off, I figured I was in the same thing.

Q. What time of the day did you leave the job?

A. I left at noon.

Q. Pardon me? A. I left at noon.

Q. You just did not come back after lunch?

A. No. I was going to go back. Mr. Hume wasn't in his office, or anything. I was going to talk to him. So, I just stayed on and went up to see Mr. Montgomery, and I went back for 4 hours, and they wanted me to pay dues to the AFL, pay back dues, and that is what I had been refusing to do all the time.

Q. On the 26th of November, the day that you walked off or left, around noon, until the 7th or 8th of February, when you went back. did you

(Testimony of Harlie Frischknecht.)

ever get in touch with anybody at the plant to inquire whether you had a job or did not have?

A. I was in touch with Mr. Heagle and Mr. Montgomery. I asked them to go back to work.

Q. Did you talk to anybody in the plant, Mr. Hume or Mr. Birchall or Mr. Fordham, or anybody else connected with the plant? A. No.

Q. You did not? A. No. [217]

Q. You did not inquire of any of them as to whether you had a job or not, or whether walking off protected your status, or whether you could come back, is that right?

A. I talked to Orville Hopkins down there, one of the bosses, and he said I would not be able to work until I joined up.

Q. Who was this you talked to?

A. Orville Hopkins.

Q. Who was he?

A. He was one of the assistant agents in the warehouse.

Q. One of the what?

A. One of the—well, he is one of the bosses. He is just a—I don't know; an assistant.

Trial Examiner Myers: Is he another party to whom you refer? What is his last name?

The Witness: I think Hopkins.

Trial Examiner Myers: Hopkins.

Q. (By Mr. St. Sure): When did you talk to him?

A. Well, I seen him downtown and asked him if there would be any chance of coming back to work.



(Testimony of Harlie Frischknecht.)

Trial Examiner Myers: When?

The Witness: Well, it was right after the Monday that I quit, and he said there would not be any chance unless we would sign up with the AFL, and I told him well, I did not figure on doing that.

Mr. St. Sure: That is all.

Trial Examiner Myers: Mr. Edises?

Mr. Edises: Just one question.

Q. (By Mr. Edises): Mr. Frischknecht, this picket line of the Teamsters which you say prevented the men from getting into the plant on this occasion, was that picket line inside the company's grounds, or was it outside the company's grounds?

A. Oh, it was way in, next to where the spinach was, way inside. Some of the guys was fighting around the spinch, you know, and it is soft, and a couple of guys would get knocked down.

Q. (By Mr. Tobriner): You don't know whether the picket line was the Teamsters or any other AFL union, do you?

A. Well, all I took it for was AFL.

Trial Examiner Myers: Any redirect examination?

Mr. Jennings: No.

Trial Examiner Myers: You are excused, Mr. Frischknecht. Thank you very much.

(Witness excused.)

Trial Examiner Myers: We will stand adjourned now until 10:00 o'clock tomorrow morning.



(Whereupon, at 5:45 o'clock p.m., Wednesday, April 10, 1946, the hearing was adjourned to Thursday, April 11, 1946, at 10:00 o'clock am.) [219]

Thursday, April 11, 1946

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Jennings: I am ready.

Mr. Agee: Yes, sir.

Trial Examiner Myers: Will you call your next witness, please, Mr. Jennings?

Mr. Jennings: Yes, I will call Mr. McVay.

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CLARENCE McVAY

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Clarence McVay.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: M-c-V-a-y.

Trial Examiner Myers: Where do you live, Mr. McVay?

The Witness: In one of the cannery cabins; No. 8.

Trial Examiner Myers: You may be seated, Mr. McVay.

(Testimony of Clarence McVay.)

Q. (By Mr. Jennings): Where are you employed at the present time, Mr. McVay?

A. Gaddis Service, Turlock.

Q. Were you at one time employed by the G. W. Hume Company in Turlock? A. I was.

Q. Were you a regular worker or a seasonal worker? A. Seasonal worker.

Q. When were you first employed, what year?

A. For the last year, '45.

Q. 1945. Were you working on the 20th of November of 1945? A. Yes, sir.

Q. When the picket line was placed in front of the plant? A. Yes, sir.

Q. Did you go through the picket line, or were you stopped? A. I went through.

Q. Did you go through on the 20th, or was it the 21st that you went through?

A. I don't remember the date, sir.

Q. All right. The day that the other people were stopped, did you go through and work?

A. I did.

Q. Did you continue to work?

A. Until the 7th of December.

Q. Of 1945? A. Yes, sir.

Q. At the time you were employed, did you sign a clearance for the AFL? A. I did. [224]

Q. Did you sign a voluntary dues deduction slip? A. I don't know——

Mr. Jennings: May this be marked as Board's exhibit next in order, Mr. Examiner?

Trial Examiner Myers: Board's Exhibit No. 10.

(Testimony of Clarence McVay.)

(Thereupon the document above referred to was marked Board's Exhibit No. 10 for identification.)

Mr. Jennings: I might state that this is merely a form, and it is for the local in Stockton rather than Modesto. If I can get a form which was used here, I would prefer it.

Trial Examiner Myers: Very well.

Q. (By Mr. Jennings): I will show you a form of authorization for dues deduction which is marked Board's Exhibit 10. Did you sign one when you were employed?

A. I did, but I told them when I signed it I did not want to. It was under protest.

Q. After you signed it, did you revoke it?

A. I did.

Q. Who told you that you had to sign it?

A. I cannot tell you his name. It was the Union representative that was there at that time.

Q. Did you pay dues to the AFL Union?

A. I did not.

Q. At the Turlock plant, the Hume plant?

A. I did not.

Q. On December 7th were you working, 1945?

A. I was.

Q. Where were you working?

A. Well, I was checking cans in the Canning Department.

Q. Was that your regular job?                      A. It was.

(Testimony of Clarence McVay.)

Q. Did any representative of the Union or of the Management speak to you about joining the Union that morning?      A. Yes, sir.

Q. Who spoke to you?

A. Well, it was the same representative. I cannot tell you the name, because I don't know.

Q. Was it Mr. Evans?

A. It was a slim, wavy-haired fellow. I can't tell you any of their names.

Mr. Tobriner: We will stipulate it was Mr. Robert Evans.

Q. (By Mr. Jennings): What did Mr. Evans tell you?

A. He asked me why I had not joined up, or asked me if I belonged to the AFL, had a clearance slip, and I told him no.

Q. What did he say?

A. He said, "You have to sign up with us or get out."

Trial Examiner Myers: Where did this conversation take place? [226]

The Witness: Right in the cannery there at my post, where I was working.

Q. (By Mr. Jennings): Mr. McVay, when you first went to work did you sign a slip similar to AFL Exhibit No. 1?      A. Yes.

Q. When you went to work did you give that to your foreman?      A. No.

Q. Did he ask you for it?

A. I don't believe he did. I don't remember.

(Testimony of Clarence McVay.)

Q. Was anyone else there when Mr. Evans was speaking to you?

A. Well, my foreman was there.

Q. What was his name?

A. Verne Gustaffsson.

Q. Was anybody else there besides yourself, Mr. Gustaffsson and Mr. Evans?

A. Well, not at first, there wasn't.

Q. Did somebody come in later?

A. Mr. Hume—well, his last name was “Art”; the one we call “Art.”

Q. Mr. Gallardo?

A. They came back later.

Q. What happened when Mr. Hume and Mr. Gallardo came back? [227]

A. Well, the Union man taken them to one side and talked to them a few minutes, and then came back. He told me I would have to sign up with him or quit my job.

Trial Examiner Myers: Who said that?

The Witness: The Union representative.

Q. (By Mr. Jennings): What did you say to that?

A. I just told him I could not sign up with him.

Q. Did he ask you to pay dues?

A. Yes, sir.

Trial Examiner Myers: Was that Mr. Evans, the Union representative?

The Witness: Yes, sir.

Q. (By Mr. Jennings): Did you refuse?

A. I did.

(Testimony of Clarence McVay.)

Q. Then what happened?

A. Well, he said I would have to quit so he told Verne to give me my time card.

Q. Told who?

A. This Verne, I can't speak the last name.

Q. Gustaffsson?

A. Yes. He gave me my card, and I put it in the box and went on out.

Q. Were Mr. Hume and Mr. Gallardo there at the time this happened?

A. No, they had left.

Q. Did either Mr. Hume or Mr. Gallardo say anything to you?

A. Mr. Hume told me that I might just as well sign up, that they could tie up the whole situation again like they did before, stop the trucks from delivering spinach.

Q. Was that all that he said?

A. Well, I think so.

Q. Did Mr. Gallardo say anything to you?

A. No, sir.

Q. Did either one of them say anything to Mr. Evans in your presence?      A. No.

Q. When you say that the foreman took your card out of the rack, what did he do with it?

A. Well, he punched my time out on it, see? He had his time cards in his pocket, so he taken the cards and punched my time and handed it to me.

Q. He handed it to you?      A. Yes.

Q. What did he tell you to do with it?

(Testimony of Clarence McVay.)

A. Well, he did not tell me.

Q. What did you do with it?

A. I put it in the box where we were supposed to drop them.

Q. What did you understand Mr. Gustaffsson intended by giving you your card? [229]

A. Well, it was plain enough. He punched my time for quitting, then, at that time of the morning.

Q. You were still working?

A. About 10:00 o'clock, and he punched my time out at 10:00 o'clock.

Q. Did you thereafter get your closing check from the Company? A. I did.

Q. Your final check. Have you worked for them since? A. I have not.

Q. At that time were you living in a company-owned home? A. Yes, sir.

Q. Was any effort made thereafter to evict you from that home? A. Yes.

Q. How shortly thereafter?

A. Well, I got the first notice to vacate the 4th of February.

Q. Have you ever been offered your job at the plant? A. No, I haven't.

Mr. Jennings: That is all.

Trial Examiner Myers: Mr. Agee?

#### Cross-Examination

By Mr. Agee:

Q. On February 4th, when you got this notice



(Testimony of Clarence McVay.)

to vacate the company home, were you working then?      A. No, sir.

Q. Had you worked between December 7, 1945, and the time of receiving this notice to vacate on February 4th?      A. No, sir.

Q. When did you first commence to work after February 4th?

A. Where did I first go to work at? At Gaddis Service in Turlock.

Q. When did you first commence working?

A. I do not remember the date exactly. I can tell you it pretty close.

(After consulting document) It was around the 15th of January.

Q. Of this year, of course?      A. Yes, sir.

Q. At the time that you started to work at the Gaddis Service Station, were you living in the company home at that time?      A. Yes, sir.

Q. It was some two or three weeks after you commenced working at Gaddis that you first got a notice to vacate the company home, is that right?

A. Well, it was the 1st of February when I got the notice.

Q. The substance of what Mr. Hume told you was that what he was trying to do was to keep the plant in operation, is that correct?

A. Well, probably so. However, he gave me the impression that he wanted me to sign up with the AFL.

Q. That was the—go ahead. Did you finish?

A. Yes, sir.

(Testimony of Clarence McVay.)

Q. That was the one conversation that you had with Mr. Hume about this, and then in that conversation he added that he thought that unless the men did sign up, that the AFL would stop the operation, as they had done before?

A. No, sir. That was not what he said. He said that he thought they could. He did not say he thought they would.

Q. Didn't you say—at least, my notes say that Mr. Hume said that you might as well sign up, or they would stop the trucks again, like they did before? A. They could stop the trucks.

Q. You understood by that, that he was referring to the AFL, did you not? A. Yes, sir.

Q. You have stated, then, all of the conversation that you had with Mr. Hume on this subject?

A. Well, in regard to the cabin, I asked him, if I would go ahead working, would he let me keep the cabin, live in it?

He said he would guarantee me a cabin, and I said, "Well, if I pay you rent and don't sign up with them, what about it?" He said, "You will have to get out." [232]

Q. You knew and understood that the company houses were for employees working for the company, did you not? A. Yes, sir.

Q. And that they were limited in number? That is, there were a lot of people that desired those houses to live in? You knew that, did you not?

A. Yes, sir.

Mr. Agee: That is all.

(Testimony of Clarence McVay.)

Mr. Tobriner: No questions.

Mr. Edises: No questions.

Trial Examiner Myers: Did you pay any rent while you lived in that house?

The Witness: No, sir.

Trial Examiner Myers: Even though you were working for the company, you did not pay any rent?

The Witness: No, sir.

Trial Examiner Myers: After December 7th?

The Witness: I offered to pay rent, and he said he did not want rent.

Trial Examiner Myers: Are there any other questions, gentlemen?

(No response.)

Trial Examiner Myers: You are excused, Mr. McVay. Thank you.

(Witness excused.)

Mr. Jennings: Mr. Miller.

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### ARCHIE MILLER

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Archie Miller.

Trial Examiner Myers: How do you spell your last name?

(Testimony of Archie Miller.)

The Witness: M-i-l-l-e-r.

Trial Examiner Myers: Where do you live, Mr. Miller?

The Witness: I live in Mr. Hume's cabin, Cabin 36.

Trial Examiner Myers: You may be seated, sir.

You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Mr. Miller, where are you employed?

A. Hume's cannery, in the warehouse.

Q. Are you a regular worker or a seasonal worker?

A. Well, I worked there in '42, through peaches. Then I worked there through peaches and spinach last year, in '45.

Q. At the present time are you a regular worker or a seasonal worker?

A. Well, I hope I am a regular worker.

Q. Have you worked in the warehouse all the time?      A. Yes, sir.

Q. Were you at work on the 20th and 21st of November, 1945?

A. Yes, sir, up until that time.

Q. Were you off part of that time because of an injury to your hand?      A. Yes, sir.

Q. Approximately when did you injure your hand?

A. Well, it was some time in November.

Q. The early part of November?      A. Yes.

(Testimony of Archie Miller.)

Q. When was your hand well enough so that you could work again?      A. The 15th of December.

Q. 1945?      A. Yes.

Q. Did you go down to the plant on the morning of November 21st, when all of the regular workers tried to go in? Do you remember the morning you were stopped?      A. Yes, I was there.

Q. Did you try to go inside the plant, or did you just remain outside?

A. Well, I just remained outside.

Q. Did you hear Mr. Fordham speak to the employees?      A. No, sir, I did not.

Q. Did any representative of the company tell you that you had to pay dues in the AFL in order to work?

A. Well, they didn't tell anyone that. [235]

Q. Were you present in front of the boiler room on November 20th, when Mr. Heagle read a list of names?      A. Yes, sir.

Q. I will show you Board's Exhibit 9, which has a list of names in it. Among those names is the name of Archie Miller.

A. Yes, mine was the fifth from the top at that time.

Q. Did you see that list?      A. Yes, sir.

Q. Did you hear Mr. Heagle read it?

A. Mr. Hume read it at the time.

Q. Mr. Hume read it?      A. Yes.

Q. Did Mr. Hume make any statements to the employees?

(Testimony of Archie Miller.)

A. Well, the only thing that he said at the present time was that we would have to stay out until it was settled.

Trial Examiner Myers: What was that last answer?

(The answer was read.)

Q. (By Mr. Jennings): Did you try to go back to work after your hand was better, Mr. Miller?

A. Well, in a way I didn't.

Q. Did you speak to any representative of the company? A. Yes, sir.

Q. Whom did you talk to?

A. I talked to Tom there. I saw him down on the street.

Q. Mr. Birchall? A. Yes.

Q. Approximately when was that?

A. Well, I think it was about the 12th or the 13th. It was just a day or two before I got my arm released.

Q. Did you ask him about going back to work?

A. Well, he asked me if I was on that CIO list. I told him I didn't know for sure whether I was still on it or not, so he went in the office and looked it up, and I were.

Q. You were on the list? A. Yes.

Q. Did you understand from that that you could or that you could not work? A. Well—

Mr. Tobriner: Objected to. We have enough in here without going into that.

Trial Examiner Myers: Sustain the objection.

(Testimony of Archie Miller.)

Q. (By Mr. Jennings): What else did you say and what else did Mr. Birchall say?

A. Well, that is all that was said about it. That is the only time I went there.

Q. What was the purpose of your going there?

A. Well——

Q. Why did you go back and talk to Mr. Birchall?

A. Well, I wanted to work. That was the only thing I wanted to do. [237]

Q. And you were not put to work at that time?

A. No.

Q. What did you do after that?

A. I went back to New Mexico.

Q. How long were you there?

A. I was there—I arrived back here the 1st day of March.

Q. The 1st of March? A. The first day.

Q. Then after you got back here, did you apply for work again? A. Yes, sir.

Q. Were you re-employed? A. Yes, sir.

Q. On what date?

A. I believe it was the 7th or 8th. I wouldn't be for sure.

Q. Right after you got back here, you were re-employed? A. Yes.

Trial Examiner Myers: The 7th or 8th of what?

The Witness: Of March.



(Testimony of Archie Miller.)

Q. (By Mr. Jennings): Were you working in August of 1945, Mr. Miller? A. Yes, sir.

Q. Do you recall at that time having been requested to sign a clearance slip similar to AFL Exhibit 1? A. I have one.

Q. Did you secure that clearance slip at that time?

A. Yes. I had to have that before I could go to work.

Q. May we see it, so that we can see the date on it? A. I may have lost it.

(After examining documents.) I do not think I have it.

Q. Did you secure one in 1945?

A. Yes, sir.

Q. Before you went to work? A. Yes, sir.

Q. Do you recall having signed another one in August of 1945?

A. That was the only one I signed.

Q. You just signed the one? A. Yes, sir.

Q. Were you ever required to sign the dues deduction card similar to this slip here, which is Board's Exhibit 10 for identification?

A. No, sir.

Q. When did you go to work in 1945, by the way?

A. Some time in July. I went to work when they started peaches, the first day that they started peaches.

(Testimony of Archie Miller.)

Q. Did you ever sign up in the FTA-CIO, sign a pledge card?      A. No, sir.

Q. I don't mean join, but did you sign a little card designating the FTA-CIO?      A. Yes, sir.

Q. When was that? [239]

A. I don't know. When I first started. I was with the rest of the bunch back there in the warehouse. I don't know what date.

Mr. Jennings: That is all.

Trial Examiner Myers: Cross-examination?

Mr. Agee: No questions.

### Cross-Examination

By Mr. Tobriner:

Q. Mr. Miller, going back to November 21st, when you saw what happened, could you describe for us briefly what the entrance to the plant is, how big it is, the gate you go through or the door you go through?

A. Well, I don't know. There are several doors to go in.

Q. The door these people were going to, or through which they customarily went?

A. Well, the one that they go through at the front is pretty wide.

Q. How about the inside door?

A. Well, it is too, at the front.

Q. At what door or near what door were you standing when you observed what happened on November 21st, the inside or the outside door?

A. Well, I was standing on the outside. At that

(Testimony of Archie Miller.)

time I had my arm in a sling, and I did not have any business in there, because I could not work on the inside.

Q. Do you know about how many people were there at that door?      A. No, sir, I do not.

Q. Were there any AFL people there?

A. Yes, sir.

Q. About how many?

A. Well, I don't know. There was a pretty good crowd there. It would be pretty hard to judge.

Q. Did you see at any time any linking of arms so that people could not get by the door?

A. No. I wasn't there all the time, so I did not see any of that at the front gate.

Q. You did not see any such linking of arms on November 21st?

A. No, sir, I did not. I might not have been there right at that time.

Q. You were there how long?

A. Because I work in the warehouse, you know, and I am not up at the front very often.

Q. How long were you at this gate on November 21st.

A. Well, I wasn't there but just a few minutes, and then I went back to the boiler room, and then from there I went back to the warehouse door.

Q. Did you see anybody prevented from getting into the plant, by physical force, that is?

A. I did not, back in the warehouse. I went on back there.

Q. You did not see anybody at the gate pre-

(Testimony of Archie Miller.)

vented by physical force from getting through, did you?      A. Not the few minutes I was there.

Q. You were there about what time? Can you place it, approximately?

A. Well, I don't remember now.

Q. Was it around 8:00 o'clock, 9:00 o'clock?

A. It was after 8:00.

Q. Pardon me?      A. It was after 8:00.

Q. Was it the usual time for people to go in?

A. Well, I think at that time they went to work at 8:00. I know we were in the back.

Q. Were the people going in at that time to work?

A. Well, some of them were already in; some of them wasn't.

Q. Some were already in?

A. Yes. Some was held up; some wasn't. I don't know why. It wasn't any of my business.

Q. You did not see anybody prevented by physical force from going in?      A. No, I didn't.

Mr. Tobriner: Thank you. [242]

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Agee: No questions.

Trial Examiner Myers: You are excused, Mr. Miller. Thank you.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, please?

Mr. Jennings: Mr. Bobb, please.

JASPER J. BOBB

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Jasper J. Bobb.

Trial Examiner Myers: Will you spell your entire name for the record?

The Witness: J-a-s-p-e-r J. B-o-b-b. I just usually use the initials.

Trial Examiner Myers: Where do you live, Mr. Bobb?

The Witness: I live at 115 Eye Street.

Trial Examiner Myers: Modesto?

The Witness: Turlock.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): By whom are you employed, Mr. Bobb? A. Mr. Hume.

Q. G. W. Hume Company?

A. That is right.

Q. How long have you been employed by that company?

A. Well, as near as I know, I worked there since about '30 or '31.

Q. About 15 years? A. 15.

Q. Are you a regular worker or a seasonal worker?

A. Have been in the last 6 or 8 years.

(Testimony of Jasper J. Bobb.)

Q. You have been regular the last 6 or 8 years?

A. Yes.

Q. When you went to work in 1945, did you sign a clearance slip from the AFL Union?

A. Yes. That was before peaches.

Q. During the year 1945, did you sign more than one or just one?

A. I think I only signed the one.

Q. When you say "before peaches," was that in the early part of August of 1945?

A. Early part of August.

Q. Did you sign any agreement for the check-off of your dues?      A. I think I did. [244]

Q. Do you remember about when you signed that?

A. I think maybe at the same time.

Q. Did you thereafter sign a revocation of it?

A. I did.

Q. How long afterwards?

A. Oh, it might have been several days; a week.

Q. Were you working in November of 1945?

A. Yes, I was.

Q. There has been testimony here that on the 20th of November, employees were stopped by a picket line, that on the 21st there was some difficulty in front of the plant. Were you working at or about that time?      A. I was.

Q. Prior to those events, had you had any discussion with any representative of management with regard to payment of dues to the AFL?

A. No, I hadn't.

(Testimony of Jasper J. Bobb.)

Q. Did you have any discussion or conversation?

Trial Examiner Myers: Do not use the word "discussion."

Q. (By Mr. Jennings): Did you have any conversation with Mr. Gallardo with regard to paying dues to the AFL? A. Yes, I did.

Q. About when did that conversation take place?

A. I don't know. Around the 19th of November, I think.

Q. Where did it take place?

A. In the cook room.

Q. Were you working? A. I was.

Q. Who else was there at that time?

A. I think Mr. Neal was there. I don't know whether he was present right at that time.

Q. Neal Watts? A. Yes.

Q. What did Mr. Gallardo say?

A. He told me I would have to go up and clear with the Union, settle with the Union, and I told him I did not want to.

Q. What else did he say, if anything?

A. Well, he said, "That is up to you."

Q. Did he tell you what you had to do in order to settle with the Union?

A. Sign a clearance slip, I suppose.

Q. Did he tell you what you had to do?

A. No, he did not.

Q. Did you go to work on November 20th?

A. Yes.

Q. What time of the morning did you go to work?



(Testimony of Jasper J. Bobb.)

A. I believe we went to work at 8:00 o'clock.

Q. Did you get inside the plant on that morning?

A. Yes. [246]

Q. During the morning did any representative of management come in and talk to you about whether or not you were going to remain working?

A. Yes, I believe he did.

Q. Who came in?

A. It seems to me that there was—well, I don't know. There were several of them come along and said we were going to have to get out because our names were on the list, but I do not just remember if it was any officials of the cannery. I am pretty sure it was not.

Q. Was that statement made to you and Mr. Watts both?

A. It was made to me. I don't know about Mr. Watts.

Q. Do you know whether Mr. Gallardo, Mr. Fordham, Mr. Birchall, or Mr. Hume told you that?

A. I think it was Mr. Gallardo that told me to go see somebody in the boiler room, or go see if my name wasn't on there. He said that he thought we would all have to go out that had their names on the list.

Trial Examiner Myers: Talk up a little louder, please.

Q. Did you go down in front of the boiler room then?

A. No, I didn't. I kept working, but some of

(Testimony of Jasper J. Bobb.)

the others went down and came back and said we would have to go out.

Q. Did they tell you that your name was on the list?  
A. Yes.

Q. How long did you continue to work? [247]

A. Oh, we worked about two hours, I believe, that morning.

Q. Then what happened?

A. Well, they all began picking up their tools, and things, and walking out, so I went out with the rest of them.

Q. Did you ever see the list of names?

A. No, I did not see the list.

Q. Showing you Board's Exhibit 9, there is a name there, "G. J. Bobb." Is that yours?

A. It should have been "J. J."

Q. On the morning of November 21st, did you go back to work?

A. We went back there about 7:30 or 8:00 o'clock.

Q. Did you try to get inside the plant?

A. Yes.

Q. Did you get inside?

A. Just got up on the porch.

Q. What happened then?

A. Well, they formed a line across the door entrance going in, the main door.

Q. Who formed a line? A. AFL.

Q. Were you stopped, then, from going in?

A. Yes.

Q. How long did you remain there?

(Testimony of Jasper J. Bobb.)

A. Oh, I don't know. There was a lot of pushing and shoving around there, and I could not say just how long it was, but it was not long.

Q. During the time you were there, did you hear any company official talking to the employees?

A. Yes, I did. Mr. Fordham came up there.

Q. Did you hear what he said?

A. He said, "What are you fellows doing here?" And we told him we were reporting to work, and he said, "You fellows are fired. Get out of my place. Get off the place."

Q. Is that all that happened?

A. Yes. We went out then.

Q. Did you ever sign a pledge card in the FTA-CIO?      A. I did.

Q. When was that?

A. Some time during peaches. I don't just remember when.

Q. That would be some time in August?

A. August.

Trial Examiner Myers: '45?

The Witness: '45.

Q. Do you wear a CIO button at work?

A. I did at that time.

Q. From what time on? When did you wear that button?

A. After that, I guess it was. Well, after I signed up with them.

Q. After you were returned—strike that.

Were you ever offered reinstatement to your job?

A. Yes, I was. [249]

(Testimony of Jasper J. Bobb.)

Q. When did you go back to work?

A. It was on the 7th.

Q. February 7th, 1946?            A. Yes.

Q. After you returned to work, did anybody approach you at the plant to join the AFL Union?

A. Yes, they did.

Q. Were you working at the time?

A. No, I don't believe they did at that time.

Q. Since you have returned, has anybody talked to you about it?

A. Yes, they have now, since spinach.

Q. That is since about the 25th of March?

A. Yes.

Q. Who talked to you?

A. I don't know. It was a slender, dark-haired fellow.

Q. Were you working at the time?

A. Yes.

Q. On how many different occasions did he talk to you?

A. He did not talk to me. He just asked me if I had signed up. We didn't hold no conversation. I was working at the time, running a seamer, and he just asked me if I signed up, and I told him no.

Trial Examiner Myers: Was he connected with the company?

The Witness: With the Union.

Trial Examiner Myers: What Union?

The Witness: AFL.

(Testimony of Jasper J. Bobb.)

Q. (By Mr. Jennings): Did he say anything to that?

A. Well, he said, "You will be sorry," when I said I would not sign.

Q. Is that all he said?

A. That is all he said.

Mr. Jennings: That is all.

Mr. Agee: I have no questions.

Trial Examiner Myers: Any questions, Mr. Tobriner?

### Cross-Examination

By Mr. Tobriner:

Q. Mr. Bobb, you said that you revoked the dues deduction slip, I think you signed in '45, is that right? A. Yes.

Q. When you revoked it, you were working, were you not? A. Yes.

Q. You were on the premises? A. Yes.

Q. At that time you spoke to a representative of the CIO-FTA, did you not? A. Yes.

Q. This FTA representative asked you or suggested to you to revoke the dues deduction slip?

A. Yes. [251]

Q. And that was on the premises of the Company? A. I believe so.

Q. On November 20th you said lots of people started walking out. Why was that?

A. That was when we was asked to quit until the thing was settled.

(Testimony of Jasper J. Bobb.)

Q. Some people walked out whose names were not read off the list, is that right?

A. Not that I know.

Q. You don't know whether they all were on the list or whether they were not on the list, is that right?

Trial Examiner Myers: He said he did not see the list.

The Witness: That is right.

Mr. Tobriner: He did not see the list. That is all.

Trial Examiner Myers: Who was this CIO representative that talked to you about the revocation of the dues check-off?

The Witness: Irwin Heagle?

Trial Examiner Myers: Who?

The Witness: Irwin Heagle.

Trial Examiner Myers: Is he an employee of the company?

The Witness: Engineer, I think.

Trial Examiner Myers: Any other questions?

Mr. Tobriner: Just one question, if I may.

Q. (By Mr. Tobriner): That slip that you signed was a printed one to revoke the dues deductions?

[Answer not shown.]

Mr. Tobriner: That is all.

Q. (By Mr. Agee): Mr. Bobb, had you been a member of Local 22382?

A. I had been, yes.

(Testimony of Jasper J. Bobb.)

Q. And you were working there at the Hume Company plant in 1940, were you? A. Yes.

Q. And had worked there of course continuously every year since? A. Yes.

Q. You knew, did you not, that throughout those years the Hume Company had signed an agreement with the Local to which you were then affiliated?

A. Which I was then, yes.

Q. And you knew, of course, that your Local was chartered by the AFL, did you not?

A. Yes.

Q. So that at the time these events occurred in 1945, that you testified to, you knew that the Hume Company had a contract with the AFL?

A. I never saw the contract.

Q. But it was a matter of common knowledge among you and the rest of the workers that the company had such a contract, was it not? [253]

A. I suppose.

Q. And you knew that that contract required membership in the AFL in order to remain employed there?

Mr. Edises: Objected to as an incorrect statement of the facts, of the records.

Mr. Agee: I will withdraw the question and ask you this:

Q. (By Mr. Agee): Commencing with the year 1940, and going through the years 1941, '42 and '43, you knew that whenever an employee failed to maintain good standing in the AFL Union, that he was let go by the Company, did you not?



(Testimony of Jasper J. Bobb.)

Mr. Edises: I want to object to that. Presumably it is intended to be based on something in the record. The record does not indicate.

Trial Examiner Myers: I will overrule the objection. What was the question?

(The question was read.)

A. I presume so.

Mr. Edises: I will ask that the answer be stricken. The answer shows that the witness had no personal knowledge of any such thing.

Trial Examiner Myers: Overruled. Motion denied.

Q. (By Mr. Agee): During the year 1944, were you acquainted with Mr. Tomson, who was then the Business Agent for your Local, was he not?

A. Yes.

Q. During that year did you see Mr. Tomson on the premises of the Hume Company plant at a time when the plant was in operation?

A. He may have been there a time or two, yes.

Q. Did you ever notice, during the years from 1940 to 1944, inclusive, any employee working there at the Hume Company plant that continued to work without maintaining good standing with the AFL Union? A. I did not personally, no.

Q. Is it a fact that all of the employees that were there working with you that you knew about, did, during those years, maintain good standing with the Union? A. Yes.

Mr. Agee: That is all.

(Testimony of Jasper J. Bobb.)

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Jennings: Nothing further.

Trial Examiner Myers: You are excused, sir. Thank you very much.

(Witness excused.)

Trial Examiner Myers: We will take a short recess. [255]

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready to proceed?

Mr. Jennings: Ready, Mr. Examiner.

Trial Examiner Myers: Will you call your next witness, please?

Mr. Jennings: Mr. Frazier, please.

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### HUSTON F. FRAZIER

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name please?

The Witness: Frazier; H. F. Frazier, Huston F. Frazier.

(Testimony of Huston F. Frazier.)

Trial Examiner Myers: How do you spell your last name?

The Witness: F-r-a-z-i-e-r.

Trial Examiner Myers: Where do you live, Mr. Frazier?

The Witness: Turlock.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Mr. Frazier, where are you employed? A. In Hume's Cannery.

Q. In what capacity? What is your job?

A. Well, most anything, now. I work at anything I have to do.

Q. Are you a regular worker or a seasonal worker? [256]

A. Year round worker.

Q. How long have you been employed?

A. It will soon be three years.

Q. In 1945, were you required to sign a clearance in the AFL? I will show you this——

Mr. Agee: Pardon me. Would it not be better to ask him if he did sign a clearance?

Mr. Jennings: All right.

Q. (By Mr. Jennings): Did you sign a clearance in the AFL in 1945? I will show you one of these little clearance slips. Did you get one of those?

A. In 1945 I belonged to the AFL.

Q. When you came to work in 1945, did you get a clearance? A. Sure.

(Testimony of Huston F. Frazier.)

Q. Calling your attention to the 20th of November, 1945, do you recall being told on the morning of that day that you were laid off?

A. Well, I never knew the date, but I know I was told to lay off.

Q. Who told you that?

A. Mr. Hume told me.

Q. Where were you working at the time?

A. In the warehouse. [257]

Q. What did Mr. Hume say?

A. Well, he just said that we was laid off. That was all.

Q. Who was laid off?

A. The whole bunch.

Q. Did he tell you why you were laid off?

A. Because we wouldn't—no, he did not say why.

Q. What did he say?

A. Well, he told us that we was going to have to be temporarily laid off.

Q. Temporarily laid off until when?

A. He did not say.

Q. What did you do after Mr. Hume told you you were temporarily laid off?

A. We just went out on the sidewalk, and in a little bit, why, we went back to work, all that wanted to work.

Q. Pardon me?

A. We just was out on the front of the building there, and stood around there for a while, and Mr.

(Testimony of Huston F. Frazier.)

Granberg come by, and he said, "All you boys that want to go to work, go on back and go to work."

Q. Did you go to work? A. Sure.

Q. Did you sign any clearance in the AFL before you went back to work? A. No. [258]

Q. Did you go to work the next day, the 21st?

A. We went to work the same day we was laid off.

Q. Did you go back the following day to go to work? A. Yes.

Q. Did you succeed in getting inside the plant?

A. We did not succeed in working, no.

Q. Did you gather there in front of Mr. Fordham's office? A. That is right.

Q. Did Mr. Fordham come out and talk to the employees? A. He did.

Q. What did he say?

A. Well, he said to get out and stay out. One of them asked him if that meant we was fired, and he said, "Yes, I mean you are fired."

Q. What did you do then?

A. Went home.

Q. Did you work after that until about the 7th of February of 1946?

A. Not until he called us back, no.

Q. You returned to work on February 7th, 1946?

A. Well, I don't know what date it was. It was about that time, though.

Q. Have you worked since? A. I have.

(Testimony of Huston F. Frazier.)

Q. Since you went back, have you been [259] approached to join the AFL? A. Yes, sir.

Q. By whom.

A. By the representatives.

Q. Was that during working hours?

A. That is right.

Q. Did you join?

A. I did, the last—it was about two weeks ago, I guess. I was told I had to join or not work.

Q. Who told you that?

A. The representative of the AFL.

Trial Examiner Myers: Do you know his name?

The Witness: No, I do not.

Trial Examiner Myers: What does he look like?

The Witness: Yes, I did know his name. It was Evans.

Trial Examiner Myers: Evans?

The Witness: That is correct. I have got the clearance slip in my pocket.

Q. (By Mr. Jennings): You got a new clearance slip this year? A. I did.

Q. Did you pay dues in the AFL in 1945, after June? A. I did not.

Mr. Jennings: That is all.

Trial Examiner Myers: Mr. Agee?

Mr. Agee: No questions. [260]

Trial Examiner Myers: Mr. Tobriner?

Mr. Tobriner: No questions.

Trial Examiner Myers: You are excused, sir.

(Witness excused.)

Thank you very much.

Trial Examiner Myers: Will you call your next witness, please?

Mr. Jennings: I should like to offer this stipulation, Mr. Examiner, that the individuals I shall name, if they were called as witnesses in this proceeding, each of them would testify as follows:

That he is employed——

Mr. Agee: Who are the witnesses?

Mr. Jennings: I have them here. Do you want to look at the names first?

Mr. Agee: Just tell me who they are.

Trial Examiner Myers: Read the names, Mr. Jennings.

Mr. Jennings: They are all regular workers. A. E. Berry; Ernest G. Bishop; Vidor Bjorklund; Harold Dillard; William J. Ely; T. Boyd McKamey; A. E. Moore; Abe Thiessen; R. B. White; and Neal Watts.

That if those individuals were called as witnesses, in this proceeding, Mr. Examiner, each of them would testify that he is a regular worker, and was employed as a regular worker by the G. W. Hume Company in 1945, in most instances, [261] or some time prior thereto; that in August of 1945 each of them did sign a clearance in the AFL and secured a clearance in approximately August, and in the manner testified to by Mr. Heagle.

Mr. Tobriner: Will you stipulate that was 22382 you are referring to?

Mr. Jennings: That is right, a clearance in Local 22382, similar to AFL Exhibit No. 1.



That on November 20, 1945, each of them was told by a company official that they were being laid off temporarily.

All of these would further testify that they gathered in front of Mr. Fordham's office; that they were of 1945, and heard their names read by Mr. Heagle, or saw their names on a list which Mr. Heagle then had; that each of them returned to work at approximately 8:00 o'clock on the morning of November 21st; that they went through the main gate and gathered in front of Mr. Fordham's office; that they were not able to get inside the plant, that Mr. Fordham then told them to get out, that they were fired.

Each of them would further testify that he signed a pledge card for FTA-CIO in either August or September of 1945; that each of them would testify that he did not sign a voluntary check-off, with the exception of Neal Watts, who would testify that he did sign a voluntary check-off and revoked it almost immediately thereafter. [262]

Trial Examiner Myers: Do you stipulate, Mr. Jennings?

Mr. Jennings: So stipulated.

Trial Examiner Myers: Mr. Agee?

Mr. Agee: I will stipulate this: If those witnesses were called, they would testify as Mr. Jennings has stated.

Mr. Edises: I so stipulate.

Mr. Tobriner: I stipulate that if they were called, they would testify as Mr. Jennings stated.

Mr. Edises: Could I ask the Reporter to read back the names of each of those persons?

(The record was read.)

Mr. Tobriner: I will have to ask that the name of A. E. Moore be deleted from that, because it is not on our list.

Mr. Agee: It is on the list attached to the complaint.

Mr. Tobriner: That is right, but it is not on the list that was read out on the November 20th meeting. It is not on the list dated November 20th.

Trial Examiner Myers: Where is Mr. Moore?

Mr. Jennings: He is working.

Trial Examiner Myers: Do you want to call him as a witness?

Mr. Jennings: We can delete Mr. Moore and call him as a witness, Mr. Examiner. His name does not appear on that list, although he told me that—well.

Trial Examiner Myers: All right. [263]

Mr. Tobriner: Mr. Jennings, perhaps you can save yourself some time.

Trial Examiner Myers: All right, delete the name of Mr. Moore.

Mr. Jennings: Is it satisfactory as to the rest, Mr. Tobriner?

Mr. Tobriner: Yes, We just cannot stipulate that you read from the list, when the list itself shows it was not there.

Trial Examiner Myers: All right.

Will you call your next witness, please, Mr. Jennings?

Mr. Jennings: We have the contract, I think, that Mr. St. Sure spoke of yesterday, and I would like to——

Trial Examiner Myers: You mean, 4(b) and 4(c)?

Mr. Jennings: Yes.

Mr. Agee: Mr. Examiner, I have just been informed that this Mr. Moore that we were talking about just now, while he was not on the list, it was stated to the Company by the Union that it was an oversight, and they immediately telephoned the Company, right after sending this list to the Company, and said that Mr. Moore should be included on the list. I am willing to stipulate that that is the fact. It might eliminate the necessity of calling Mr. Moore.

Trial Examiner Myers: Very well.

Do you so stipulate? [264]

Mr. Jennings: I would like to point out to Mr. Tobriner, Mr. Examiner, that Mr. Heagle said there was a longhand list given to him, and Mr. Moore says that his name was read off as one of those. At least, that is what he told me.

Mr. Agee: If it was added orally, I think it would have the same effect.

Mr. Jennings: That is right, yes.

Mr. Agee: I am willing to stipulate, and eliminate the necessity of calling Mr. Moore up from Turlock, where he is now working.

Mr. Tobriner: It is impossible for us to know

what was on the longhand list that was prepared, so if the Company states that, I do not suppose we have any objection.

Mr. Agee: The stipulation I made was that the Company was advised by the Union orally, immediately after delivering this list to the Company, that Mr. Moore had inadvertently been overlooked, and that he should be added to and included in the list. That would be Mr. Birchall's testimony in that respect.

Mr. Tobriner: That would be Mr. Birchall's testimony?

Mr. Agee: That is right.

Mr. Tobriner: I so stipulate.

Mr. Jennings: Then may I add Mr. Moore to the list again, and stipulate that he would testify [265] substantially as the others with the amendment as indicated by Mr. Birchall and Mr. Agee.

Trial Examiner Myers: Do you so stipulate?

Mr. Jennings: I so stipulate.

Trial Examiner Myers: Do you, Mr. Edises?

Mr. Edises: So stipulate.

Trial Examiner Myers: Very well.

Mr. Edises: I do not think Mr. Tobriner's stipulation is on the record.

Mr. Jennings: Mr. Examiner, I should like to ask the reporter to mark as Board's Exhibit 4(b) an amendment to Board's Exhibit 4(a). I will call the Examiner's attention particularly to Item 5 on the first page.

Trial Examiner Myers: Very well, sir.

Is there any objection to that paper going in evidence?

Mr. Agee: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence. I will ask the reporter to please mark it as Board's Exhibit 4(b).

(The document referred to was marked Board's Exhibit No. 4(b) and was received in evidence.)

#### BOARD'S EXHIBIT No. 4(b)

The within memorandum of agreement contains the amendments to the collective bargaining contract between California Processors and Growers Inc., and The American Federation of Labor and California State Council of Cannery Unions, as negotiated during 1944 and as ordered by the National War Labor Board in Case No. 111-7430-D. This memorandum shall constitute an interim memorandum modifying the amended contract executed July 10, 1943 (originally adopted June 10, 1941), and the Supplementary Emergency Agreement of the same date in 1943, for the purpose of setting forth the understandings reached by the parties since March 1, 1944, and the subsequent directive orders of the War Labor Board, pending the conclusion of negotiations for the 1945 season, at which time it is contemplated that the basic agreement will be reprinted, with the following modifications included:

Board's Exhibit No. 4(b)—(Continued)

1. The paragraph following the "Witnesseth" clause shall read as follows:

"Each and every, all and singular of the obligations of said collective bargaining agreement dated June 10, 1941, as amended January 26, 1942, and July 10, 1943, are hereby ratified and confirmed, without variation or modification of any kind except as set forth herein, and in the 'Amended Supplementary Emergency Agreement' of even date herewith."

2. The following sentence shall be added to Section 3(a) of the contract:

"The Employer shall submit, at reasonable times, upon the request of the Union, duplicate hire cards or a list of all employees hired since the previous submission, as well as a list of the names of workers who have quit or been discharged."

3. The following words shall be added to paragraph (3) of Section 3(b) of the contract:

". . . when it is possible to do so . . ." following the words "undertakes to have available" and preceding the words "at member plants."

4. Paragraph (5) of Section 3(b) shall read as follows:

"Each local union and each plant shall provide a practical method for receiving notices

Board's Exhibit No. 4(b)—(Continued)  
herein provided, and if notice is given but not  
availed of by the other party, or if no one is  
reasonably available to receive notice, the party  
not in default shall be released from obligation  
under these rules, until the default is cor-  
rected."

5. The following new subsection shall be added  
to Section 3 and numbered 3(c):

"3(c) The Employer will deduct from their  
wages and turn over to the proper officers of  
the union the initiation fees and union dues  
of such members of the union as individually  
and voluntarily certify in writing that they  
authorize such deductions. Such authorization  
shall apply until or unless it is revoked indi-  
vidually and voluntarily, in writing, by such  
union members.

"The Employer and the Union each agree  
that neither of them nor any of their officers  
or members, or employees, will intimidate or  
coerce employees into executing such certifi-  
cates or causing them to be revoked. If any  
disputes arise as to whether there has been  
any violation of this pledge, such disputes shall  
be regarded as a grievance and submitted to  
the grievance procedure established by this  
agreement."

6. Section 4(a) of the contract shall read as  
follows:



Board's Exhibit No. 4(b)—(Continued)

“The following work is covered by this agreement:

“(a) All work performed in Employer's canneries, frozen or frosted food plants and dehydration plants and storehouses, warehouses, labeling rooms, or in sheds or lots adjacent thereto where commodities or materials are processed or stored.”

7. Subsection (2) of Section 5(a) shall read as follows:

“5(a)(2) During any period of the year when perishable products, whether fruits or vegetables, are being processed (including the exempt periods as provided in the Fair Labor Standards Act), not more than eight (8) hours shall constitute a day's work at straight time, and not more than forty-eight (48) hours shall be worked at straight time and without the payment of overtime in any week.”

8. The following sentence shall be added to Section 6(b) of the contract:

“From and after the date hereof, any employee now or hereafter being paid by the week or month, may, by a written notice to his employer, elect to be paid on an hourly basis instead of in accordance with the provisions of this subsection, and upon receipt of such notice, the Employer shall thereafter pay such employee on an hourly basis, rather than in ac-

Board's Exhibit No. 4(b)—(Continued)  
cordance with the provisions of this subsection."

9. Section 7(a) shall read as follows:

"Straight time in any day shall be eight (8) consecutive hours, except for one (1) hour meal period, or an additional meal period if necessary because of the late starting time of the day's work, as provided in subsection (d) of Section 7 hereof, and except for work recesses as provided in Section 5(c) hereof."

10. The provisions following the first paragraph of subsection 7(b) shall read as follows:

"Subject to the provisions of Section 5 hereof, during any portion of the year when perishable products are being processed, overtime shall be paid as follows:

"For all employees:

"For time in excess of forty-eight (48) hours, exclusive of meal periods in any given week—one and one-quarter times the straight time rate.

"For time in excess of sixty (60) hours, exclusive of meal periods, in any given week—one and one-half times the straight time rate.

"For time in excess of eight (8) but not to exceed ten (10) consecutive hours as above defined, in any given day—one and one-quarter times the straight time rate.

"For time in excess of ten (10) consecutive

Board's Exhibit No. 4(b)—(Continued)  
hours as above defined, in a given day—one and one-half times the straight time rate.

“For time in excess of twelve (12) consecutive hours as above defined, in a given day—double the straight time rate.

“Incomputing overtime for workers during any portion of the year, there shall be no duplication or pyramiding of payment for overtime in excess of eight (8) or ten (10) or twelve (12) hours in any given day and in excess of forty-eight (48) or sixty (60) in any given week, as the case may be.”

11. Section 12 of the contract shall read as follows:

“Any employee who has been on the payroll of a company and has worked 1600 or more hours at either straight or overtime during the current period of twelve (12) consecutive months from and after the date or anniversary date of his employment shall receive one week's vacation with pay after the first such year, and two weeks' vacation with pay after five consecutive years of such employment. Vacation pay shall be computed on the basis of the average weekly hours during the eligibility period multiplied by the straight time hourly rate of pay, but in no event less than 40 hours nor more than 48 hours.

“In order to arrive at the ‘average weekly earnings’ of an employee, the ‘eligibility period’

Board's Exhibit No. 4(b)—(Continued)  
shall be considered as 52 weeks (less one or two weeks for previous vacation allowance, as the case may be), and the figure of 52 or 51 or 50 weeks should be divided into the total of straight and overtime hours worked by the employee during the year beginning from the date or anniversary date of his employment or during the calendar year, as the case may be.

“Vacations shall be taken prior to the beginning of the next processing season, or at other times by mutual consent.”

12. The following words shall be added to subsection 15(c) of the contract:

“... and a representative of the Union . . .”  
after the words “of the Employer” and before the words “and a record shall be made,” in the second sentence of said subsection.

13. The provisions of Section 18 relating to the term of the agreement shall be extended to March 1, 1946.

14. Schedule “A,” attached to the contract, shall be amended by adding the following subheading and paragraphs covering “Shift Differential”:

“In any plant where clearly defined shifts are established on a plant-wide basis as hereinafter defined, the first shift starting on or after 6 a.m. in any day shall be considered the first shift for said plant for such day, and the fol-

## Board's Exhibit No. 4(b)—(Continued)

lowing shifts during such day shall be considered second and third shifts, respectively, for the purpose of applying the shift differential payment of 5 cents per hour; provided, however, that where any such clearly defined first shift starts so late in the day that the workers starting said shift are working at straight time in accordance with the provisions of the master contract after 6 p.m. of said day, such workers employed at straight time after 6 p.m. shall be considered to be second shift workers, and entitled to the 5-cent differential from and after 6 p.m.

“ ‘Clearly defined shifts established on a plant-wide basis’ shall mean where uniform shift starting and ending times per day are scheduled in a given plant on a shift basis for the entire plant, regardless of the number of operations being performed or the number of products being processed, with variations in such uniform shift starting and ending times solely to perform related departmental or group work normally done prior to or at the conclusion of related operations. ‘Clearly defined shifts on a plant-wide basis’ shall not include situations where varying shifts are scheduled in a plant during a given day for unrelated departments or groups of workers or for processing different products.

“In any plant where clearly defined shifts are not established on a plant-wide basis as

Board's Exhibit No. 4(b)—(Continued)  
herein defined, and where varying shifts are scheduled by department or products, any work performed at straight time between 6 a.m. and 6 p.m. during any days shall be considered first shift work, and any work at straight time, in accordance with the provisions of the master-contract, between the following hours of 6 p.m. and 6 a.m. shall be considered second or third shift work for such day, and entitled to the five-cent differential.

“‘Straight time,’ as used herein, shall include ‘base pay’ as provided in the master contract, for work performed on Sundays or holidays.

“The purpose of the formula set forth herein is to define second and third shifts so as to avoid and prevent the creation of intraplant and interplant inequalities within the canning industry.

“In connection with the application of this formula, the following provisions will control the payment of overtime rates:

“If first shift workers work beyond eight hours they shall receive overtime but no differential. If second or third shift workers work beyond 8 hours they shall receive overtime based on their regular rate including the differential.”

15. The following language shall be substituted for the first two paragraphs under the subheading “Piece Work Rates” in Schedule “A”:

Board's Exhibit No. 4(b)—(Continued)

“The guaranteed minimum rate for new piece-workers, during the first two weeks of their employment, shall be 60c an hour, and for all other piece rate employees the minimum rate shall be 70c an hour.

“The following formula shall be followed for computing piece-work earnings and continuing the ‘make-up’:

“(a) The guaranteed hourly minimum of 70c an hour for experienced workers shall be calculated on a converted hour weekly basis.

“(b) All persons engaged in an operation on which piece-work is being paid are to be included in the audit.

“(c) Piece-work rates shall be set so that they may reasonably be expected to yield a return for the average operator of 80c an hour. When average weekly earnings are lower than 80c an hour, a percentage adjustment will be made to all in the department.

“(d) Payroll audit by the Division of Industrial Welfare of the State of California shall be continued.

“(e) All workers earning less than the guaranteed hourly minimum shall be adjusted to the guaranteed hourly minimum on a converted hour weekly basis and the audit of piece-worker earnings shall be made on the workers' earnings so adjusted.

“(f) Any percentage adjustments resulting because of the average earnings of less than



Board's Exhibit No. 4(b)—(Continued)  
80c an hour shall be applied to actual piece-work earnings only. Employers should pay whichever figure is the greater—adjusted earnings or the guaranteed hourly minimum.”

16. The “Supplementary Emergency Agreement” is amended as follows:

“ ‘Emergency victory’ workers shall be exempt from the union 50c weekly fee during the first two weeks of their employment, but then shall be required to pay the fee if they remain employed for longer than two calendar weeks. All new employees shall continue to be required to secure clearance cards from the Union.

“This modification of the 1943 supplementary agreement is limited to a period of ‘grace’ of two calendar weeks during which no 50-cent fees are to be collected from Victory workers. Thereafter, the 50-cent fees shall be paid in accordance with the supplementary agreement.”

17. The following provisions shall govern the effective dates of the changes set forth in this memorandum:

Item 1 became operative as of May 15, 1944 (the concluding date of negotiations), with the understanding that final approval of several 1944 items depended on National War Labor Board final determination.

Item 2 has been operative during 1944, and is reaffirmed as of the date hereof.

Board's Exhibit No. 4(b)—(Continued)

Item 3 became operative as of May 15, 1944.

Item 4 became operative as of May 15, 1944.

Item 5 became effective as of June 4, 1945, following final decision by the National War Labor Board.

Item 6 became operative as of May 15, 1944.

Item 7 is effective retroactively to March 1, 1944, by order of the War Labor Board.

Item 8 is effective as of the date hereof.

Item 9 is effective retroactively to March 1, 1944, by order of the War Labor Board.

Item 10 is effective retroactively to March 1, 1944, by order of the War Labor Board.

Item 11 is effective retroactively to March 1, 1944, by order of the War Labor Board.

Item 12 has been operative during 1944 and is reaffirmed as of the date hereof.

Item 13 has been operative during 1944, was confirmed by letter dated January 4, 1945, and is reaffirmed as of the date hereof.

Item 14 is effective retroactively to March 1, 1944, by order of the War Labor Board.

Item 15 is effective as of June 4, 1945, with retroactive application relative to the minimum rate only to be determined by War Labor Board clarification.

Item 16 is effective as of June 4, 1945, by order of the War Labor Board as modified by the agreement of the parties.

Board's Exhibit No. 4(b)—(Continued)

In Witness Whereof the parties hereto have set their hands and seals this ..... day of June, 1945.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.

By .....

AMERICAN FEDERATION  
OF LABOR.

By .....

CALIFORNIA STATE  
COUNCIL OF  
CANNERY UNIONS.

By .....

Mr. Jennings: Copies of that were not available last night, Mr. Examiner. Mr. Agee has assured me that there will be copies available later. May permission be granted to substitute two copies for this copy which I am offering? [266]

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Trial Examiner Myers: Very well.

Mr. Agee: All right. May I then have that? I will do that immediately.

(Mr. Jennings hands document to counsel.)

Mr. Jennings: As Board's Exhibit 4(c), I offer a document headed "Schedule A, Revised, 10/31/45", which is also an amendment to Board's Exhibit 4(a).

Trial Examiner Myers: Any objection, gentlemen, to the paper going in evidence?

Mr. Edises: No objection.

Mr. Agee: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence. I will ask the reporter to please mark it as Board's Exhibit 4(c).

(The document referred to was marked Board's Exhibit No. 4(c) and was received in evidence.)

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## BOARD'S EXHIBIT No. 4(c)

### Amendment to Master Contract

\* \* \*

#### Additional Wage Provisions:

1. Regardless of minimum wage rates specified in Schedule "A" hereof, any person employed under and pursuant to the 1942 contract, who was paid a higher scale over and above the minimum bracket rate for his regular or principal classification<sup>6</sup>, shall, while similarly classified, receive an

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<sup>6</sup>"The words 'regular or principal classification' are hereby interpreted to mean the work or combinations of work previously and customarily performed by individual workers. Therefore, the premiums to be maintained are those which previously and customarily were paid individual workers over and above the base bracket rate for any work to which they may have been assigned. These established premiums per hour for such employees above the 1942 bracket base rates shall be maintained in the various classifications to which workers

increase in rate equal to the increase in minimum base rate for his regular or principal classification as between the 1942 and 1943 wage rates. If he is assigned to a lower bracket, as provided in Section 6(f) hereof, he shall retain the same premium per hour over and above the minimum rate for such new bracket assignment, while so assigned, as that theretofore established as the premium per hour over and above his regular or principal bracket classification rate.

2. Effective October 31, 1945, the following increases in wage rates apply:

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may be assigned hereafter during the term of this agreement on the same basis in cents per hour that they existed above the bracket base rate while assigned to each classification of work during 1940.

“It is expressly provided, however, that such premiums per hour may be changed, adjusted, or discontinued hereafter in the event that the character of the normal assignment of such employees is changed by reasons of variations in conditions, production, processes, or methods of work, justifying such change, adjustment, or discontinuance of premiums. Such changes, adjustments or discontinuances or premiums, however, shall be made only after one week's notice in writing is given by the employer to the local union stating the reason therefor; and if the Union objects in writing to such change, adjustment, or discontinuance of premium being made within one week after such notice is given, then the matter shall be subject to appeal in accordance with the provisions of Section 8 of the contract, and the change, adjustment, or discontinuance shall not become effective until or unless it is approved by the Adjustment Board.”  
—Central Adjustment Board Ruling 6/30/41.

All hourly time rate minimum wages stipulated in the contract shall be increased ten cents per hour.

3. Watchmen shall receive the Bracket V rate as a minimum wage, and shall be governed by the same provisions as other workers relating to hours of work, except that they shall receive overtime for the seventh consecutive day, and not Sundays or holidays as such. The provisions of Section 7(d) relating to meal time shall not be construed to require that watchmen are to receive overtime after 5 hours, provided they have time off from their regular duties for meal periods, although remaining on the premises during such periods.

4. Floor ladies who are performing supervisory duties shall receive fifteen (15) cents an hour above the base hourly rate when so employed. This provision shall not apply to inspection work unless the inspector likewise has supervisory duties.

5. The provisions set forth herein shall be effective as of October 31, 1945, as a master contract and shall operate as a direct agreement between individual employers and individual local unions as to named plants and unions upon the execution of certificates in the manner and form as set forth in Section 2 of the collective bargaining agreement of June 10, 1941, and shall continue in full force and effect thereafter in accordance with the provisions of Section 18 of the collective bargaining agreement.

In witness whereof the parties hereto have set

their hands and seals this 19th day of November, 1945.

CALIFORNIA STATE COUNCIL OF  
CANNERY UNIONS

/s/ VERNON L. PANKEY,  
President

/s/ HAL P. ANGUS,  
Secretary-Treasurer

CALIFORNIA PROCESSORS AND GROW-  
ERS, INC.

/s/ EMIL RUTZ,  
President

/s/ J. W. BRISTOW,  
Secretary-Treasurer

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Mr. Jennings: May the same permission, Mr. Examiner, be granted to withdraw 4(c) as was granted for 4(b)?

Trial Examiner Myers: Very well, Mr. Jennings. Permission is granted.

Mr. Jennings: May it be stipulated by all counsel that at all times since August of 1945, representatives of the charging union, the FTA-CIO, have been denied access to the plant of the Respondent cannery at Turlock?

Mr. Agee: I so stipulate. [267]

Mr. Tobriner: What is the date, Mr. Jennings, please?

Mr. Jennings: August of 1945.



Mr. Edises: So stipulated.

Mr. Tobriner: So stipulated.

Trial Examiner Myers: Mr. Jennings.

Mr. Jennings: I so stipulate.

We have this matter of the stipulation with regard to the testimony which Mr. Rearick would give.

Do I understand that you still want Mr. Rearick here to testify, Mr. Tobriner? That was left open last night.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: Are you ready gentlemen?

Mr. Agee: Yes.

Mr. Jennings: Ready, Mr. Examiner.

Yesterday, Mr. Examiner, I stated on the record that Mr. Rearick, if called as a witness, would give certain testimony. I understand now that all counsel are agreed that if he were called, he would testify as I have stated.

Mr. Agee: So stipulated.

Mr. Tobriner: So stipulated.

Trial Examiner Myers: Mr. Edises?

Mr. Edises: So stipulated.

Trial Examiner Myers: Do you stipulate?

Mr. Jennings: So stipulated. [268]

Trial Examiner Myers: Thank you.

Mr. Jennings: May it further be stipulated by all counsel that if Clemie Robinson, Monroe Robinson and Thomas R. Broll were called as witnesses

herein, each of them would testify that he secured a clearance from Local 22382 in about August of 1945, and that each of them would testify with respect to the events of November 20th and 21st, 1945, in substantial accordance with the testimony of the other seasonal employees who have been called herein.

Mr. Agee: So stipulated.

Mr. Edises: So stipulated.

Mr. Tobriner: So stipulated.

Mr. Jennings: Each of those individuals are seasonal employees.

Trial Examiner Myers: You will so stipulate?

Mr. Jennings: I will so stipulate, Mr. Examiner.

Mr. Examiner, if I am able to locate Clyde Faddis and Harry E. Pierson, I would expect to put them on the stand. If not, I may ask for a stipulation with respect to what they would testify.

With respect to John M. Smith, a seasonal worker named in the charges, not as present in this vicinity, I will try to secure a stipulation. If I cannot, he is not available to testify.

Mr. Agee: May I say this, that we feel that as far as [269] we can go is to stipulate as to witnesses that are available and could be produced and called, and that we feel that that is as far as we can go. If a witness is not available, we do not feel that we want to stipulate to that.

Trial Examiner Myers: Very well.

Mr. Jennings: That is all I have at this time, Mr. Examiner.

I should like, if I may, to reserve leave to re-open

my case, if I am able to secure the attendance of any of those individuals, the three I have named.

Trial Examiner Myers: Very well, sir.

Mr. Agee: May I proceed?

Trial Examiner Myers: Yes.

Mr. Agee: Mr. Birchall, will you step up?

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THOMAS D. BIRCHALL

a witness called by and on behalf of the Respondents, G. W. Hume Company and California Processors & Growers, Inc., being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Thomas D. Birchall.

Trial Examiner Myers: Where do you live, sir?

The Witness: Pardon?

Trial Examiner Myers: Where do you live?

The Witness: 1018 Franquette Avenue, San Jose. [270]

Trial Examiner Myers: You may be seated, sir.

You may proceed, Mr. Agee.

Q. (By Mr. Agee): By whom are you employed, Mr. Birchall?

A. The G. W. Hume Company.

Q. In what capacity?

A. General Manager.

Q. In connection with this controversy between the AFL Union and the charging CIO Union, did you make up in your own handwriting a statement

(Testimony of Thomas D. Birchall.)

of facts and events concerning this matter, which occurred in the year 1945?

A. Yes, I did.

Q. When did you make up such a statement?

A. Progressively as the events occurred.

Q. Did you make that up in your own handwriting?

A. Yes, I did.

Q. In this statement were the notations that you made there made at or immediately following the occurrence of the events themselves?

A. Yes, following the events.

Q. Is it necessary for you in your testimony from time to time to refer to that statement in order to refresh your recollection?

A. Yes, I would like to.

Q. Commencing generally with this situation, Mr. Birchall, and calling your attention to the year of 1940, [271] did the Hume Company have contracts for the years 1940 to 1944, inclusive, with the Cannery Workers Union, Local 22382?

A. Yes, they did.

Q. In so far as the Company's dealings with employees is concerned, is that the only organization with which the Company had agreements?

A. That is the only organization.

Q. You are familiar with the contract that covered the period from March 1, 1945 up to March 1 of this year, are you.

A. Yes.

Q. When to your knowledge, was the first time that there was any attempt made by the FTA Union

(Testimony of Thomas D. Birchall.)

involved in this matter to organize or obtain members for that organization among the employees of the Hume Company?

A. It came to my attention in the fall of 1945.

Q. Will you state what happened in substance at that time, in connection with that matter?

Mr. Agee: By the way, I think counsel would like to see that before you refer to it.

Trial Examiner Myers: We will take a short recess while counsel is examining the statements.

(Whereupon a short recess was taken, after which proceedings were resumed as [272] follows:)

Mr. Jennings: Mr. Examiner, before we convene I would like to state for the record that Mrs. Clemie Robinson and Mr. Monroe Robinson are here in the court room. We have stipulated about their testimony, and I understand no counsel desires to examine them further. That being the case, I think they should be free to go.

Trial Examiner Myers: Is that correct, gentlemen? Does anybody want to examine them?

Mr. Agee: That is correct.

Mr. Tobriner: No, I have no desire to examine them.

Trial Examiner Myers: They are excused.

Mr. Jennings: Thank you very much.

Q. (By Mr. Agee): Mr. Birchall, referring to the statement in which you said you recorded the

(Testimony of Thomas D. Birchall.)

events chronologically, will you refer to that statement and give us the date of the first notation?

A. It is concerning the revocation notices, and it is of September 8th to 13th.

Mr. Edises: Mr. Examiner, I simply want to state, as far as we are concerned, if counsel wishes to permit the witness to make a narrative statement, we have no objection.

Mr. Agee: I would be glad to do that. It will save a lot of time.

Mr. Jennings: It is quite all right with the Board, or you can offer it. [273]

Mr. Tobriner: No objection.

Trial Examiner Myers: Very well, sir.

Q. (By Mr. Agee): Will you take your statement and give the account of the matters referred to therein in narrative form? Just go right along. Start at the beginning, and go right through.

A. I could read the statement.

Q. That is satisfactory, if you will read the statement then, but read it slowly and distinctly, so if counsel wish to interrupt at any time, they may.

Are there any matters of argument in there, that is, your personal opinions or conclusions, or arguments of any kind? We will have to eliminate those. If you come to any such portion, will you eliminate it, please?

Mr. Edises: I looked at it. I think it is fairly factual.

Q. (By Mr. Agee): All right. Go right ahead.

A. In order that the present situation of the

(Testimony of Thomas D. Birchall.)

G. W. Hume Company be clearly understood, it is necessary that the entire background of the employee-employer relationship from the time the Union entered the picture until the present be set forth.

In the fall of 1940, the workers at the Hume plant were organized into a group which became part of "Cannery Workers Union Local 22382", an independent American of Federation of [274] Labor Union. Contracts with this group have governed the company's dealings with the employees from that time to the present. The present existing contract has been approved by the NLRB to be valid until March 1, 1946.

Mr. Edises: That, I think, probably, is one of those legal conclusions that should not probably be in the record.

Mr. Agee: We will stipulate that that is a legal conclusion of the witness.

A. (Continuing): During the 1945 operating season, unrest among the workers became apparent. Employees signed AFL pledge cards and dues deduction authorizations, but a good many immediately revoked their dues deduction authorizations. The confusion and unrest steadily mounted during the 1945 peach operations.

During this period of unrest, the Food, Tobacco, Agricultural and Allied Workers Union, CIO, commenced proselyting members in the group. Shortly thereafter they were successful in obtaining an



(Testimony of Thomas D. Birchall.)

industry-wide election. The statistics of this election show——

Mr. Jennings: I think this is argument, Mr. Examiner, coming up.

The Witness: May I read it, and——

Mr. Agee: I think that is right. I think you should eliminate that.

The Witness: All right. [275]

Mr. Agee: In other words, understand, Mr. Birchall, that what we are trying to do is to let you testify in narrative form, but when it comes to a question of argument or opinion, you are not entitled to give that.

The Witness: That is right. You warn me when I approach those points will you?

Trial Examiner Myers: Just give us the facts.

Q. (By Mr. Agee): Why do you not refer to your chronological statement? You have nothing but facts set forth there.

A. All right. I will commence by telling that the revocation notices referred to previously were turned in on or about August 8th to 13th, and they were received and honored by the Company.

Trial Examiner Myers: How many were turned in?

The Witness: I think in the neighborhood of 150.

Trial Examiner Myers: How many employees did you have at the time?

The Witness: 400, approximately.

Trial Examiner Myers: Were those seasonal and——

(Testimony of Thomas D. Birchall.)

The Witness: Seasonal and regular workers.

Trial Examiner Myers: All right.

A. (Continuing): At this time the Union representatives Brown and Bowman made an effort to persuade the workers to cancel these revocation notices, and their efforts were unsuccessful. No dues were collected after the revocation [276] notices had been received.

Trial Examiner Myers: You mean, no dues from those who signed the revocation?

The Witness: That is correct.

A. (Continuing): At the commencement of the fall pack, the Union, according to its customary practice, signed up approximately 123 workers out of a total of 175 employed.

Mr. Edises: That is the AFL Union?

The Witness: The AFL Union.

A. (Continuing): At the time that the fall pack was commenced, the company was instructed to lay off or fail to employ all those who would not clear, and this request was not granted.

Q. Who made the request?

A. The Union, represented by Mr. Brown and Mr. Evans.

Q. AFL? A. AFL.

Q. They requested that certain employees be laid off?

A. It was a blanket request. All employees that did not clear with the union.

Q. They made a request that all employees who did not clear with the AFL Union be laid off?

A. That is correct.

(Testimony of Thomas D. Birchall.)

Q. You say the Company did not comply with that request?      A. That is correct.

Trial Examiner Myers: When was the request made?

The Witness: That was at the commencement of the fall spinach pack. I do not know the exact date.

Mr. Agee: Approximate.

The Witness: The approximate date would be——

Trial Examiner Myers: In what month was it?

The Witness: It was in the month of November; about the 10th.

Trial Examiner Myers: About the 10th?

The Witness: About the 10th.

A. (Continuing): During the week of November 17th, 1945, the Company was advised by the Union representatives Torreano, Brown, King and Evans, to discharge one Clifford Luther for pursuing anti-AFL activities on the Company's time. This charge was investigated and found to be untrue, and the man was not discharged.

Trial Examiner Myers: Who made the investigation? Did the Company make the investigation?

The Witness: I made the investigation.

Trial Examiner Myers: All right.

A. (Continuing): Operations proceeded smoothly through November 19th. Between 9:00 and 10:00 P.M. on Monday, the Teamsters Union refused to allow the E. J. Swanson Co. to deliver the

(Testimony of Thomas D. Birchall.)

spinach. Swanson & Co. are the independent truck line who were at that time hauling spinach for the company. [278]

Q. Give me the date and the time again.

A. The date would be November 19th. The time is approximately between 9:00 and 10:00 o'clock in the evening, P.M.

Q. You say the "Teamsters Union", which is AFL? Correct?           A. Correct.

Q. Did what in connection with this truck?

A. They prevented the truck from being delivered, the truck load of spinach from being delivered at the plant.

Mr. Tobriner: You are not now referring to 22382?

The Witness: I am referring to the Union that controls the truckers' operations, whatever that may be called.

Mr. Agee: Go ahead.

Trial Examiner Myers: Swanson was supposed to deliver certain spinach to Hume and Company?

The Witness: That is correct. They are a truck company.

A. (Continuing): Mr. Hume, R. G. Hume, arrived at the plant at 11:00 o'clock that evening, and was informed by Torreano and Evans that the spinach deliveries would be stopped until certain employees were discharged.

Q. Were those employees named?

A. They were not named at that time.

(Testimony of Thomas D. Birchall.)

Q. Were they described in any way?

A. Not at that time.

Q. All right. [279]

A. On Tuesday morning, November 20th, the plant was prepared for work, as usual. However, no spinach was delivered. An AFL picket line was established, and the Union demands were made in the form of a letter, which is now in evidence in these proceedings.

Mr. Agee: Just a second.

Is that letter in evidence?

Mr. Jennings: Board's Exhibit 9.

Mr. Agee: I see.

All right. Go ahead, then.

A. (Continuing): The contents of this letter was telephoned to Mr. Hume prior to the actual receipt of the letter. After due deliberation, the management agreed to accede to the Union demands. The workers were assembled, and the Union demands made known to them. The list of men whose discharges the Union sought was read, and the workers were informed that these men were laid off. By the time these events had taken place, it was approximately 10:00 o'clock in the morning, and at that time it was impractical to operate for the balance of the day, so operations were suspended until the commencement of Wednesday, the 21st.

On Wednesday morning—

Trial Examiner Myers: What were the men told?

The Witness: Pardon?

(Testimony of Thomas D. Birchall.)

Trial Examiner Myers: What were the men told?

The Witness: They were told they were laid off.

Trial Examiner Myers: Was any reason given to the men for being laid off?

The Witness: The letter was read to them, and they were informed that they should be laid off until this matter "could be straightened out", I think are the exact words that were used.

Trial Examiner Myers: Who made the statement?

The Witness: Mr. Hume made that statement, R. G. Hume, and at that time Mr. Heagle confronted Mr. Hume with the request that he would guarantee that these workers would be returned to the jobs, whereupon Mr. Hume retracted his statement that they were temporarily laid off, and substituted the statement that they were laid off. Period.

A. (Continuing): On Wednesday morning, a book check was established by the AFL representatives at the Hume plant, and while this book check was in progress and during the operation of the cannery, while the cannery was in operation that morning, a group of men, presumably those who had been discharged, and others, forced entrance into the plant without permission. They were physically stopped at the entrance to the preparation room by the AFL Union representatives. At this time a scuffle ensued, and unfortunately at this particular moment no company representative was present.

(Testimony of Thomas D. Birchall.)

The watchman was immediately summoned. He restored order, and the Plant Superintendent was sent for. Mr. Fordham [281] appeared on the scene.

Mr. Edises: Just a moment. I think that portion about their being physically stopped had probably better be stricken. In view of the subsequent testimony that no company representative was present, it would obviously have to be hearsay.

Q. (By Mr. Agee): Did you see or observe the picket line in operation and action that morning of November 21st?

A. I was not at the spot when this occurred.

Q. You were not?

A. I was not there.

Mr. Agee: I see. Then we consent that that go out.

Q. (By Mr. Agee): You say that Fordham was called by the watchman?

A. That is right.

Q. Then what transpired?

A. Fordham appeared and it is my understanding that he informed the gathered people that they were trespassing.

Mr. Jennings: This again would be hearsay.

The Witness: Yes, it is all hearsay.

Mr. Agee: You have called Mr. Fordham to come here, have you not?

The Witness: That is right.

Mr. Agee: All right.

Q. (By Mr. Agee): Eliminate what you your-



(Testimony of Thomas D. Birchall.)

self did not hear. What did you see or hear, if anything, that morning, yourself?

A. Unfortunately, I was in another portion of the plant when this event took place, and as I arrived there, the workers were at that moment walking out of the plant, so all that I can testify here concerning this event is hearsay.

Q. At the time that you saw the workers walking away after the event had occurred, about what time of the morning was it?

A. I guess approximately 10:00; around 10:00.

Q. All right. Now go ahead with your next event.

Trial Examiner Myers: How many employees did you have in the plant at that time?

The witness: I am afraid I could not accurately answer that.

Trial Examiner Myers: About how many.

The Witness: Oh, I would guess there were a hundred people present, other than this group.

Trial Examiner Myers: No, I do not mean present. I mean, how many in the plant?

The Witness: In the plant? About 100.

Trial Examiner Myers: And how many in the group, about 30?

The Witness: About 40.

Trial Examiner Myers: Then you had about 140 employees that were there at that time?

The Witness: That is right. [283]

Q. (By Mr. Agee): Would you go to the next event that you have listed?

(Testimony of Thomas D. Birchall.)

A. I think that covers the complete story of the actual events that occurred.

Q. The Union that the company had the contract with has been referred to, and we will refer to it as No. 22382, is that correct?

A. That is correct.

Q. For the purpose of our questions, when we say "AFL Union," unless we designate it otherwise, you can understand it would mean this 22382. Do you understand that?

A. I understand that.

Q. Did the AFL Union from time to time request the discharge of any of the employees?

A. Yes, they did.

Q. By whom were those requests made, that is, by what individual?

A. Mr. Torreano made one request of me personally, that I can testify to.

Q. Were any of those requests, to your knowledge, ever made in writing?

A. With the exception of the 25 or 26 names on the letter which is in evidence there, I don't know of any requests that were made in writing.

Q. In connection with these oral requests coming from the Union, upon what ground were they made?

A. The ground was not explained to me.

Q. Following such request, what action, if any, did the Company take?

A. They consistently opposed such demand at this particular time.

(Testimony of Thomas D. Birchall.)

Q. Were there any occasions when demands were made that an employee be discharged because he was not in good standing with this AFL Union?

A. Other than this particular event? Yes.

Q. You referred to one specific instance. His name was what?

A. Maraquias—excuse me. I will have to look that one up.

Mr. Tobriner: Mr. Agee, may I ask you what time you are referring to in these questions?

Mr. Agee: I will ask him to fix the time on this one.

A. (Continuing) It is my understanding that Maraquias Pereze was discharged July 15, 1944, at the request of the Union, for failure to join the Union. He worked from June 29, 1944; 14 days.

Trial Examiner Myers: That took place in 1944?

The Witness: '44, that is right.

Q. (By Mr. Agee): Do you have in mind the names of any employees involved in a similar request?

A. That is the only specific name I have.

Q. Were there other instances in which a request was made for the Company to discharge an employee?

A. I understand that it was the general practice.

Mr. Edises: I ask that that go out.

Trial Examiner Myers: Strike it out.

Read the question to the witness, please.

(The question was read.)

(Testimony of Thomas D. Birchall.)

A. All that I can testify to that is hearsay, yes.

Mr. Edises: I ask that go out.

Trial Examiner Myers: Strike it out.

Mr. Jennings: Strike out the "yes." The first part of the answer should remain, should it not, Mr. Examiner?

Trial Examiner Myers: Read the question to the witness, please.

(The question was read.)

A. There were, but I have no personal connection with them.

Trial Examiner Myers: Just answer the question.

The Witness: All right.

A. Yes.

Q. Do you know of any of those instances of your own knowledge, or is your knowledge based on hearsay?

A. My knowledge is based on hearsay.

Q. I will ask you if the AFL Union served a demand or made a demand upon the Company that the Company enter into a contract with it for the year commencing March 1, 1946? [286]

A. Yes, they did.

Q. I call your attention to the commencement of this demand, which recites that the Board's order reads as follows:

(Testimony of Thomas D. Birchall.)

“It is hereby ordered that the elections held from October 11 to December 20, 1945, inclusive, among the employees of members of C. P. & G., and among the employees of the independent companies, be and they are hereby vacated and set aside.”

Then in the language of the demand:

“As a result of this order we now are, as we always have been, the exclusive bargaining agent for your employees. The Board by its own order admits that the recent elections were illegal and now stand voided. The American Federation of Labor cannot accept a position that gives us less than we had prior to the illegal elections. We demand a contract on behalf of our organization that continues to give us exclusive bargaining rights and that affords us a Union shop. We further demand that all increases shall be retroactive to March 1, 1946.”

Is that the language in which the Union made the demand upon the Company?

A. This demand was made to the California Processors and Growers, of which the Company is a member, yes.

Q. Following that demand, what action, if any, did the Hume Company take in response?

A. We resisted this demand until, at the com-

(Testimony of Thomas D. Birchall.)

mencement of our 1946 spring spinach operations, the AFL Union again tied up our trucking operations.

Q. You are familiar with that part of the contract between the Hume Company and the Union for the year commencing March 1, 1945, and ending March 1, 1946, which provides for an arbitration in the event any disputes arise between the Company and the Union?

A. What are the dates of that contract?

Q. For the contract covering the period from March 1, 1945, up to March 1, 1946.

A. Yes.

Q. Following this demand, did the Company enter into a stipulation with the Union to arbitrate the dispute that arose by virtue of this demand made by the Union upon the company?

A. Yes.

Q. I hand you a document dated February 8, 1946, entitled "Stipulation to Arbitrate," and ask if that was the written stipulation entered into on or about the date it bears?

A. To the best of my knowledge, yes.

Q. That recites, does, that, "It is hereby agreed by the parties——"

Mr. Agee: First I will offer this in evidence, and then I will read it.

Trial Examiner Myers: Any objection?

Mr. Edises: No objection.

Mr. Tobriner: No objection.

(Testimony of Thomas D. Birchall.)

Trial Examiner Myers: It will be received in evidence, and I will ask the reporter to mark it as Hume's Exhibit No. 1.

(The document referred to was marked Hume's Exhibit No. 1, and was received in evidence.)

## HUME COMPANY EXHIBIT No. 1

February 8, 1946

### STIPULATION TO ARBITRATE

It is hereby agreed by the parties listed below that the issues described below shall be heard by an arbitrator to be named by the Director of the U. S. Conciliation Service, Department of Labor, said arbitrator to be a member of the permanent staff of the U. S. Conciliation Service.

The issues to be determined are as follows:

Whether the G. W. Hume Co., a member of California Processors and Growers, Inc., in accordance with the terms of the collective bargaining agreement between California Processors and Growers, Inc., and California State Council of Cannery Unions, and/or the agreement between G. W. Hume Co. and Local Union 22382, and/or the past practices of the union and the plant management, is required to maintain a union shop.



(Testimony of Thomas D. Birchall.)

The decision of the arbitrator shall be final and binding upon the parties. No price issue is involved.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.,

Representing G. W. Hume  
Company.

By J. W. BRISTOW,  
(Written Signature).

JOHN W. BRISTOW,  
(Typed Signature).

Address: 1200 Financial Cen-  
ter Building, Oakland 12,  
California.

CALIFORNIA STATE COUN-  
CIL OF CANNERY UNIONS,

Representing Local Union  
22382.

By HAL P. ANGUS,  
(Written Signature).

HAL P. ANGUS,  
(Typed Signature).

And By VERNON L. PANKEY,  
(Written Signature).

VERNON L. PANKEY,  
(Typed Signature).

Union Address:  
414 Thirteenth Street  
Oakland 12, California

(Testimony of Thomas D. Birchall.)

Mr. Agee: I will read that into the record.

“It is hereby agreed by the parties listed below that the issues described below shall be heard by an Arbitrator to be named by the Director of the U. S. Conciliation Service, Department of Labor, said Arbitrator to be a member of the permanent staff of the U. S. Conciliation Service.

“The issues to be determined are as follows:

“Whether the G. W. Hume Co., a member of California Processors and Growers, Inc., in accordance with the terms of the collective bargaining agreement between California Processors and Growers, Inc., and California State Council of Cannery Unions, and/or the agreement between G. W. Hume Co. and Local Union 22382, and/or the past practices of the Union and the plant management, is required to maintain a union shop.

“The decision of the Arbitrator shall be final and binding upon the parties. No price issue is involved.

“CALIFORNIA PROCESSORS  
AND GROWERS, INC.,

“Representing G. W. Hume  
Company.

“CALIFORNIA STATE COUN-  
CIL OF CANNERY UNIONS,

“Representing Local Union  
22382.”

(Testimony of Thomas D. Birchall.)

Q. (By Mr. Agee): Following that, was the matter referred to the Central Adjustment Board for arbitration? A. Yes.

Q. I hand you a document entitled "Minutes of Special Meeting of Central Adjustment Board held at 1200 Financial Center Building, Oakland, on Friday, February 8, 1946, at 1:30 p.m.," and ask you if that is the report that was communicated to the Hume Company by the Central Adjustment Board? A. Yes.

Mr. Agee: We offer that as Hume No. 2.

Mr. Jennings: No objection.

Mr. Edises: No objection.

Mr. Tobriner: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the Reporter to please mark it as Hume Exhibit No. 2.

(The document referred to was marked Hume's Exhibit No. 2 and was received in evidence.)

## HUME COMPANY EXHIBIT No. 2

Minutes of Special Meeting of Central Adjustment Board Held at 1200 Financial Center Building, Oakland, on Friday, February 8, 1946, at 1:30 p.m.

Present: Ted Lopez, Harry Rizzo, Mike Elorduy,

(Testimony of Thomas D. Birchall.)

Rose Sanders, Vern Pankey, Sam Kai Kee, A. W. Ford, Ralph Wanzer, A. L. Walters, J. W. Bristow.

In attendance: Mary Jenkins, Bob Irwin, Joe Ferriera, George Mock, Wesley King, H. C. Torreano, Hal P. Angus, T. P. Hedt, F. S. Clough, J. P. St. Sure.

The reading of the minutes of the last Central Adjustment Board meeting was dispensed with.

Chairman Pankey presented the complaint involving the G. W. Hume Co. dated February 4, 1946, as follows:

Nature of Complaint:

“The G. W. Hume Company has mailed letters to approximately twenty-five ex-members of Local Union #22382 who were not in good standing.

“The letters mentioned above advise and request that these ex-members return to work at the Hume plant on Thursday, February 7, 1946.”

Mr. St. Sure described the various discussions held in the recent past concerning the application of Section 3(a) of the agreement, stating that these discussions have resulted in no common agreement between union and employers representatives concerning the interpretation of Section 3(a) of the contract.

(Testimony of Thomas D. Birchall.)

Mr. St. Sure described the question at issue in this case as follows:

“Whether the G. W. Hume Co., a member of California Processors and Growers, Inc., in accordance with the terms of the collective bargaining agreement between California Processors and Growers, Inc., and California State Council of Cannery Unions, and/or the agreement between G. W. Hume Co. and Local Union 22382, and/or the past practices of the union and the plant management, is required to maintain a union shop.”

It was moved by Mr. Elorduy, seconded by Mr. Rizzo, that the G. W. Hume Company be required to maintain a union shop in accordance with the above considerations which comprise the issue.

The following were designated as voting members: Ted Lopez, Harry Rizzo, Mike Elorduy, Rose Sanders, A. W. Ford, Ralph Wanzer, A. I. Walters, Sam Kai Kee.

A secret ballot resulted in a four to four vote; whereupon the Board ordered the case transmitted to an arbitrator for decision.

Following discussion upon the choice of an arbitrator, it was mutually agreed by all parties that the U. S. Conciliation Service would be requested to appoint a permanent staff member of that Service as arbitrator and the secretaries of California

(Testimony of Thomas D. Birchall.)

State Council of Cannery Unions and of California Processors and Growers, Inc., were directed to prepare and transmit the Stipulation to Arbitrate.

There being no further matters before this meeting, it was adjourned at 2:00 p.m.

/s/ J. W. BRISTOW,  
Secretary.

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Q. (By Mr. Agee): I call your attention to the findings of the Board to the effect that: [290]

“A secret ballot resulted in a four to four vote; whereupon the Board ordered the case transmitted to an Arbitrator for decision.

“Following discussion upon the choice of an Arbitrator, it was mutually agreed by all parties that the U. S. Conciliation Service would be requested to appoint a permanent staff member of that Service as Arbitrator and the secretaries of California State Council of Cannery Unions and of California Processors and Growers, Inc., were directed to prepare and transmit the Stipulation to Arbitrate.”

That appeared in the report made to the Company? A. That is right.

Mr. Agee: I have my exhibits backwards, Mr. Examiner.

(Testimony of Thomas D. Birchall.)

Q. (By Mr. Agee): This meeting of the Adjustment Board was No. 1, was it not, and that was immediately succeeded by the stipulation to refer the matter to the Labor Department, is that right?

A. That is right.

Q. Following that, did your representative, in connection with this matter, receive this letter which is dated April 3, 1946, from the United States Department of Labor, United States Conciliation Service?

A. Yes.

Q. Signed by Mr. George Cheney?

A. Yes.

Mr. Agee: We offer this as Hume No. 3.

Trial Examiner Myers: Any objection?

Mr. Edises: No objection.

Mr. Jennings: No objection.

Mr. Tobriner: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as Hume's Exhibit 3.

(The document referred to was marked Hume's Exhibit No. 3, and was received in evidence.)



(Testimony of Thomas D. Birchall.)

HUME COMPANY EXHIBIT No. 3

U. S. Department of Labor, United States Conciliation Service, 1755 Federal Building, Los Angeles 12, California.

April 3, 1946

Paul St. Sure, Attorney  
Financial Center Building  
Oakland, California

Dear Mr. St. Sure:

Re: California Processors &  
Growers, Inc., Arbitration  
(Representing G. W. Hume Company)

Confirming the information given you several weeks ago over long distance telephone from Washington, D. C., respecting the above-entitled matter, I desire to respectfully decline the appointment as Arbiter of this controversy and consequently tender my resignation. The Director of our Service in Washington has been advised of my inability to serve.

Very sincerely yours,

/s/ GEO. CHENEY,  
Arbiter.

cc: Mr. Saul Wallen

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Mr. Agee: I will read that for the record.

(Testimony of Thomas D. Birchall.)

“Paul St. Sure, Attorney  
Financial Center Building  
Oakland, California

“Dear Mr. St. Sure:

Re: California Processors and  
Growers, Inc., Arbitration.”

Mr. Jennings: Mr. Examiner, the letter is in the record. I do not think it is necessary to read it.

Mr. Agee: I thought maybe the Examiner might want to know what occurred, in order to follow the testimony.

Trial Examiner Myers: I read all the exhibits. If you want to read it, go ahead.

Mr. Agee: It is very short.

“Confirming the information given you several weeks ago over long distance telephone from Washington, D. C., respecting the above-entitled matter, I desire to respectfully decline the appointment as Arbiter of this controversy and consequently tender my resignation. The Director of our Service in Washington has been advised of my inability to serve.

“Very sincerely yours.”

Could we have a recess at this time, and adjourn for lunch?

Trial Examiner Myers: Very well. How long should we take for lunch today?

Mr. Tobriner: One hour, I suggest, so we may be able to finish it up as early as possible.

(Testimony of Thomas D. Birchall.)

Mr. Agee: That is perfectly satisfactory.

Trial Examiner Myers: Very well. We will adjourn now until 1:45.

(Thereupon, a recess was taken until 1:45 o'clock p.m.) [293]

### After Recess

(Whereupon the hearing was resumed, pursuant to the recess, at 1:45 o'clock p.m.)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Tobriner: Ready.

Mr. Agee: We are ready.

Trial Examiner Myers: Very well.

### THOMAS D. BIRCHALL

a witness called by and on behalf of the Respondents, G. W. Hume Company and California Processors & Growers, Inc., having been previously duly sworn, was examined and testified further as follows:

### Direct Examination

(Resumed)

By Mr. Agee:

Q. Mr. Birchall, you testified that the company continued operations during the fall of 1945 without acceding to the demands of the union that all employees who were not members of the union in good standing should be discharged, is that correct?

A. At first, yes, we did.

(Testimony of Thomas D. Birchall.)

Q. Then you came down to the events of November 20th and November 21st, is that correct?

A. That is correct.

Q. After November 21, 1945, did the company continue in operation? A. Yes.

Q. What were they processing?

A. Spinach.

Q. About when did the spinach season end?

A. The date I think was the 5th of January, 1946.

Q. Under what conditions did the company operate between November 21, 1945, and approximately January 15, 1946, when the spinach season ended?

A. Well, there were no disturbances of any kind.

Q. Was the entire spinach crop processed, that is, that came into the plant?

A. The entire crop was handled, yes.

Q. After the stoppage of the truck that you referred to, on November 20th, were there any further stoppages of work, or anything of the kind?

A. No further stoppages. Everything was smooth.

Q. Are you familiar with a publication known as the "FTA-CIO Cannery Workers"?

A. I have seen copies.

Q. Do you have in mind a statement that was published in that publication on or about November 3, 1945, with reference to the payment of dues to the AFL union by members of the CIO?

(Testimony of Thomas D. Birchall.)

A. Yes, sir. I recall such a statement.

Mr. Edises: Objected to as immaterial.

Trial Examiner Myers: Overruled.

A. Yes, I recall such a statement.

Q. Do you have that article?

A. Yes, I have.

Q. Will you find it, please?

A. Yes. I have this publication in my hands now.

Q. Will you state the date of the publication first? A. It is dated November 3, 1945.

Q. Will you point to the item that I mentioned?

A. (Indicating).

Q. You are pointing to the third column on the first page of this publication, is that correct?

A. That is correct.

Q. Did the company cause this statement made in this publication to be called to the attention of the employees?

A. It was called to the attention of the employees.

Q. I call your particular attention to this part of the article. In the first place, the headline above the article recites: "FTA Locals Stopping AFL Checkoff—Pay Dues to CIO."

Is that correct? A. That is correct.

Q. In the body of this article appears what purports to be a statement from the CIO in quotes:

"However, in cases where workers still find it necessary to pay AFL dues, the FTA will give full credit for dues paid to the AFL." [296]

(Testimony of Thomas D. Birchall.)

Was that part of the statement called to the attention of the employees of the cannery?

A. It was.

Q. Was an effort made by the company to induce the employees, regardless of their personal desires for affiliation, to nevertheless, in order to carry the operation, comply with the AFL demands and pay dues to the AFL? A. Yes.

Q. In connection with the work there at the plant, after the spinach was finished on or about January 15, 1946, were there any plant operations, that is, operations of the whole plant until on or about February 7th?

A. No, no canning operations.

Q. Were canning operations commenced on or about February 7th?

A. No. Canning operations were commenced March 25, 1946.

Q. Then was there any interference or stoppage with whatever work was going on at the plant between February 7, 1946, and March 25, 1946?

A. No, there was no interference.

Mr. Edises: I move to strike the entire line of testimony in regard to stoppages, on the ground that the question of the employer's motives for acquiescing or engaging in a violation of the National Labor Relations Act are immaterial, and particularly in that the employers' notion that it may be subjected to some form of economic duress has been repudiated by both the Board and the courts as an excuse for violating the National Labor Relations Act.

(Testimony of Thomas D. Birchall.)

Trial Examiner Myers: I will deny the motion.

Mr. Edises: I move to strike the testimony dealing with the contents of any paper published by FTA, on the ground that nothing which might have been said by the FTA on that subject could possibly exonerate the company or exculpate in any way their violations of the Act.

Trial Examiner Myers: I will deny the motion. You should have objected to the questions.

Mr. Edises: I had an objection in to that question, your Honor.

Trial Examiner Myers: The only question you objected to was when he was asked, "Have you got in mind a certain publication?"

Mr. Edises: Perhaps technically you may be right, but I think that your Honor's ruling at that time indicated a desire to permit exploration of that subject matter.

Trial Examiner Myers: I will deny the motion.

Q. (By Mr. Agee): Mr. Birchall, is the company equipped to handle its own trucking?

A. No.

Q. You rely entirely on outside truckers, do you? A. Yes. [298]

Q. At the time that you mentioned, when this truck was stopped, was any statement made to the company at that time by the AFL that if these incoming truckloads being hauled to your plant were diverted to other plants, that it would be declared "hot cargo"?



(Testimony of Thomas D. Birchall.)

A. That is right. Such a statement was made.

Trial Examiner Myers: By whom?

The Witness: The statement was made by Mr. Torreano of the AFL.

Mr. Agee: I have no further questions.

Trial Examiner Myers: Have you any questions?

Mr. Tobriner: I have no questions.

Trial Examiner Myers: Mr. Jennings, have you any questions?

#### Cross-Examination

By Mr. Jennings:

Q. You referred in your testimony, Mr. Birchall, to a book check conducted by the AFL.

A. That is right.

Q. What is a book check? What do you mean by that?

A. My understanding of the procedure was this, that the union would establish a point near or at the gate to the entrance to the plant through which all employees must clear before being permitted to go to their jobs within the plant.

Q. That is what you mean by a "book check"?

A. That is what I meant by a "book check." The common practice in the past years.

Trial Examiner Myers: Did they have to exhibit to the representative of the union their dues book?

The Witness: That is right.

Mr. Jennings: Have you Board's Exhibit 4(b), Mr. Agee?

(Testimony of Thomas D. Birchall.)

Mr. Agee: Yes. (Handing document to counsel.)

Q. (By Mr. Jennings): I will show you Board's Exhibit 4(b), Mr. Birchall, and in particular Item No. 5 at the bottom of the first page and the top of the second page.

A. Yes. I have read that paragraph.

Q. In June of 1945, the Hume Company was a member of the C. P. & G., is that correct?

A. That is correct.

Q. This contract therefore covered the relationship between the Hume Company and the AFL union?

A. That is correct.

Q. I am referring now to Board's Exhibit 4(b).

A. That is correct.

Q. Beginning, then, upon the date of the execution of this contract, that contract was in effect, insofar as the Hume Company was concerned?

A. Yes. [300]

Q. I will show you also Board's Exhibit 8, an agreement dated March 25, 1946. Is that agreement presently in effect?

A. It is.

Q. The Hume Company is still a member of the C. P. & G.?

A. It is.

Q. Is the green book contract, as supplemented and amended, also in effect, or is the green book contract no longer in effect, so far as the Hume Company is concerned?

A. I cannot answer that question.

Mr. Edises: What was the answer, please?

(The answer was read.)

(Testimony of Thomas D. Birchall.)

A. I perhaps would know him if I saw his statement. I do not connect his name with the face.

Mr. Jennings: I have nothing further.

Q. (By Mr. Edises): Mr. Birchall, may I see the memorandum that you used in your testimony?

(Witness hands document to counsel.)

Q. Will you read the item which is set forth here as paragraph No. 4. please? Just read it aloud into the record.

A. "At the time of the fall spinach signup, the management, R. G. Hume, was told by the union representatives, Brown and Evans——"

This has already been read in the record.

Q. That is right. [302]

A. "—to lay off those workers who refused to sign up. These included full time workers who had been working all year. Whereupon Brown and Hume placed a call to the C. P. & G. to check the legality of the union's request. A conversation between Hume and Clough. Clough advised that the company had no right to discharge workers——"

Q. Who is Clough?

A. Clough is a member of the staff of C. P. & G.

"—for their refusal to sign with the union. The company conveyed this information to the union."

Mr. Tobriner: Object to further reading of this. I do not see the point of it. What goes on within the C. P. & G. is not the concern of any of the parties. I move that it be stricken, Mr. Trial Examiner.

(Testimony of Thomas D. Birchall.)

Trial Examiner Myers: Overruled.

A. (Continuing): "The company conveyed this information to the union, and acted accordingly. Before checking with the C. P. & G., the company was under the impression that the worker had to sign up in order to stay on the job, and those workers who were hired were so informed. This position was reversed and clarified upon receipt of the C. P. & G.'s advice. No workers were discharged at this time because of their failure to sign up."

Q. Does that statement that you have just read comport with the fact, that is, this actually happened?

A. That is true, but you must understand that there was a great deal of confusion in our minds at this time, and we were seeking a solution to this thing. At the moment that was the information we had at hand. However, we did not continue to follow this policy, as the record will show.

Q. Do you have the FTA newspaper from which you read an excerpt a moment ago?

A. I do. (Handing document to counsel.)

Q. Where was the part that you read?

A. (Indicating.)

Q. Please read the remainder of that extract; rather, the remainder of the article from which you read an extract, starting here. (Indicating.)

A. "As a result of the FTA victory over the AFL Teamsters at the government elections, the United States government laws grant us the right

(Testimony of Thomas D. Birchall.)

to operate as a union of the Northern California Cannery Workers.

“President Donald Henderson pointed out: ‘We are within our full rights in refusing to pay AFL dues and in paying CIO dues. Nobody is going to be fired for refusing to pay AFL dues. However, in cases where workers still find it necessary to pay AFL dues, the FTA will give full credit for dues paid to the AFL.’

“Our position, however, is that cannery workers need not pay AFL dues and should pay FTA-CIO from now on, in order to build a strong union, supported with funds to help win their demands. FTA members may take withdrawal cards between seasons, or can remain as voting and participating members in the local union by paying unemployed dues.”

Mr. Edises: Thank you. That is all.

Mr. Jennings: I have just a couple of questions, Mr. Examiner.

Trial Examiner Myers: Very well, sir.

Q. (By Mr. Jennings): Referring to these notes that you have on the last page, there is a rather long list of names. No. 22 is the name of J. M. Smith, No. 32 is the name of Oscar Johnson. Can you tell me what that list of names represents?

A. It is headed “Men on Payroll, November 19th; Not on November 21st.”

Q. Does that mean they—

A. That is what it means.

(Testimony of Thomas D. Birchall.)

Q. Do you have any other notation with respect to J. M. Smith, which would indicate——

A. There is a series of check marks and signs on here, but I am afraid I cannot interpret them. I knew at the time, but I do not know now, what it means.

Trial Examiner Myers: Who made up that list?

The Witness: I made it up. No, I beg your pardon. It is in the handwriting of R. G. Hume; partially in my handwriting.

Trial Examiner Myers: What?

The Witness: I hasten to amend that. Partially in Mr. Hume's writing, and partially in mine.

Trial Examiner Myers: Who was that list composed?

The Witness: I think we were trying at that moment to determine just exactly who was standing where.

Trial Examiner Myers: When was it made?

The Witness: It was made some date after November 21st. I don't know the date.

Q. (By Mr. Jennings): There are some notations there indicating that one of the signs means, "Signed and no revocation". Do you find any signs?

A. That is right. We made some effort to trace these things out, but it is so confused that I would hesitate very much to make any statements about the accuracy of that without doing a lot of detailed checking.

Mr. Jennings: I see. That is all.

(Testimony of Thomas D. Birchall.)

Will that list remain here?

Mr. Agee: Oh, yes. We will have it marked for identification, if you would like.

Mr. Jennings: I just thought, when Mr. Hume takes the stand, there might be some questions.

Thank you. That is all.

Mr. Edises: I have no further questions.

Trial Examiner Myers: Any other questions?

Mr. Tobriner: One or two questions.

Q. (By Mr. Tobriner): Mr. Birchall, when you referred to a Robert, Bob Clough, Mr. Clough is not an attorney, is he?

A. No. Mr. Clough is a member of the staff, an employee. He was characterized as an employee.

Trial Examiner Myers: Do you know what his position is with the company, that is, the Association?

The Witness: I do not, other than that he is an employee.

Trial Examiner Myers: Did you ever consult him?

The Witness: Oh, yes, I have talked with him.

Trial Examiner Myers: About what?

The Witness: Matters concerning employee and employer relationships.

Trial Examiner Myers: Did you ever get a letter from him?

The Witness: I think there are letters in the



(Testimony of Thomas D. Birchall.)

company files signed by him, possibly. I am not sure about it.

Trial Examiner Myers: You do not know how he signs his name?

The Witness: No.

Trial Examiner Myers: Have you any letters in your files here?

The Witness: No, not here; no. I may point out that yesterday that point was brought up in testimony, and he was characterized as an employee of the C. P. & G. [308]

Trial Examiner Myers: What is he? Do you know?

The Witness: Well, he——

Trial Examiner Myers: Is he an office boy, or a messenger, or what?

The Witness: I think he is a representative in the field for the organization, C. P. & G.

Trial Examiner Myers: What do you consult him about?

The Witness: Matters of labor relations.

Trial Examiner Myers: Does he come to the plant?

The Witness: Occasionally he comes to the plant.

Trial Examiner Myers: Where is his office?

The Witness: His office is in Oakland, in the Financial Center Building, the C. P. & G. office.

Trial Examiner Myers: Are there any other questions?

(Testimony of Thomas D. Birchall.)

Q. (By Mr. Tobriner): The C. P. & G., of course, has its attorney, Paul St. Sure, has it not?

A. That is right.

Q. His office is not with Paul St. Sure?

A. It is not with Paul St. Sure.

Q. That list that you had there, with these various markings on it, was that drawn up to show who had made revocations and who had not made revocations, who had cleared with the AFL and who did not, and that kind of thing?

A. That is right. It was an effort made by the company to find out who was working and who was not working, and where they stood, so we would know how to proceed with our operations. It is very confusing to run a plant and deal with the unions, too.

Q. It was not the purpose to find out who was in the CIO, was it?

A. Not particularly. We were not concerned with their membership in any union.

Mr. Tobriner: I see. That is all. Thank you.

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Jennings: Nothing.

Trial Examiner Myers: You are excused. Thank you very much.

(Witness excused.)

Mr. Agee: Mr. Gallardo, will you step up, please?

ARTHUR A. GALLARDO

a witness called by and on behalf of the Respondents, G. W. Hume Company and California Processors & Growers, Inc., being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Arthur A. Gallardo.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: G-a-l-l-a-r-d-o. [310]

Trial Examiner Myers: Where do you live, sir?

The Witness: Turlock.

Trial Examiner Myers: You may be seated, sir.

You may proceed, Mr. Agee.

Q. (By Mr. Agee): Are you employed by the Hume Company at Turlock? A. Yes, I am.

Q. In what year did you first commence your employment with that company? A. 1919.

Q. Have you worked continuously for that company ever since? A. Yes, I have.

Q. What is your present position with the company?

A. Well, I am Assistant Superintendent.

Q. Were you Assistant Superintendent from the year 1940 on? A. Yes.

Q. You are familiar with the fact, are you not, that a union was organized there at the plant in 1940? A. Yes.

Q. And that was an AFL union, Local No. 22382? A. Yes.

(Testimony of Arthur A. Gallardo.)

Q. Did you know who was the man who organized that local, and who was its Business Agent at that time? A. R. M. Tomson. [311]

Q. And he continued as business agent for the local for several years thereafter, did he?

A. Yes.

Q. Who was the shop steward at the Hume plant during that time?

A. Well, they had two different shop stewards. There was one of the shop stewards that was named Ralph Hance.

Q. How do you spell it?

A. H-a-n-c-e. And he left the Hume Company and came to work at Flotill's. I don't know exactly what the date was. In fact, I am not sure of the year, but he was succeeded by Irwin C. Heagle, and Heagle was shop steward there—oh, I guess, for at least two years.

Q. Did your duties as Assistant Superintendent have to do with the discharging of employees from time to time?

A. I beg your pardon? I didn't get the question.

Q. Did your duties as Assistant Superintendent have to do with the discharging of employees from time to time? A. Yes.

Q. Were there occasions during the years from 1940 to 1944, inclusive, when a representative of this Local 22382 would come to you and request that certain employees be discharged?

A. Yes.

(Testimony of Arthur A. Gallardo.)

Q. Was there just one or two of those occasions, or were there numerous occasions when that occurred?

A. Well, there were numerous occasions.

Q. During that entire period of time, was there any time when you did not comply with that request and go ahead and discharge the employee in question?

A. No. I would inform the employee that they had to clear with the union, or they could not work there, and most of the time they just would not show up any more. I would just tell them they could not work there. I never came right out and definitely told anybody, "You are fired." I would just inform them of the fact that they would have to have a clearance with the union, or they could not work in the cannery, and they usually did not work, or else they got a clearance.

Trial Examiner Myers: Did you tell them what union?

The Witness: The Cannery Workers Union, 22382. That is the one that was in effect down there.

Mr. Agee: You may cross-examine.

Trial Examiner Myers: Any questions?

Mr. Tobriner: No questions.

Mr. Jennings: No questions.

#### Cross-Examination

By Mr. Edises:

Q. These persons whom you discharged on re-

(Testimony of Arthur A. Gallardo.)

question of the AFL, were these new employees, or were they old employees?

A. Most of them were old employees, but I believe there were a few new ones in there. In fact, some of them I did not even know their names.

Q. Old employees in the sense that they had worked for you in previous seasons?

A. Well, not necessarily worked for me. I had seen them around the plant. They had worked in other departments.

Trial Examiner Myers: When he says "new", he means the Hume Company.

The Witness: Oh, yes. Yes.

Mr. Edises: No further questions.

Mr. Tobriner: No questions.

Mr. Agee: That is all.

Trial Examiner Myers: You are excused. Thank you.

(Witness excused.)

Mr. Gallardo: Am I permitted to go now?

Trial Examiner Myers: Yes, sir. Thank you.

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### RAYMOND G. HUME

a witness called by and on behalf of the Respondents, G. W. Hume Company and California Processors & Growers, Inc., being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, sir?

(Testimony of Raymond G. Hume.)

The Witness: Raymond G. Hume.

Trial Examiner Myers: Where do you live, sir?

The Witness: Turlock.

Trial Examiner Myers: You may be seated, Mr. Hume.

You may proceed, Mr. Agee.

Mr. Agee: May I state at this time, Mr. Jennings, that during the noon recess I drove to Turlock and interviewed Mr. Fordham, the Plant Superintendent, and when this man returns to Turlock, he will cause Mr. Fordham to come back up here. But, the one point I wanted to question him about, and I will state what he will testify to, is this: he will say that these workers, headed by Mr. Heagle, collected outside of his office on the morning of November 21st of 1945, and Heagle asked him if they could go to work. Fordham replied that they could not until they had cleared with the union and until they did so, they would have to get off the company property. He will deny that he used the word "fired", or said anything more to Mr. Heagle, other than I have recited, and that he said it in a tone of voice loud enough for the persons collected around Heagle to hear him.

If you want, I will have him come up.

Mr. Jennings: I would stipulate that.

Trial Examiner Myers: Do you want a few minutes?

Mr. Jennings: No. I would say this: I would stipulate that if Mr. Fordham were called, he



(Testimony of Raymond G. Hume.)

would so testify, but the employees have testified something other than that.

Mr. Agee: That is our stipulation now, and that was our stipulation before. We do not say as to the truth of your witness. We do not say the truth of ours. We just stipulated that if they were called, they would so testify. [315]

Trial Examiner Myers: That is going to be very confusing for me when I go to resolve the conflict of testimony. I tried to point that out yesterday. As long as you cannot agree, I think you had better call Mr. Fordham.

Q. (By Mr. Agee): What is your full name, sir? A. Raymond Gorham Hume.

Q. Are you connected with the Hume Company at Turlock? A. I am.

Q. What position do you hold with that company? A. President.

Q. In what year did you first become President of the company? A. 1941.

Q. Mr. Hume, you are familiar with the fact, are you, that a union was organized there at the plant in the year 1940? A. Yes.

Q. And that that was a union affiliated with the AFL, is that correct? A. That is correct.

Q. In the ensuing years from 1940 to 1944, inclusive, the company made contracts annually with that union? A. That is correct.

Q. Those contracts were on a yearly basis, and would expire each year on March 1, is that correct?

A. Yes. [316]

(Testimony of Raymond G. Hume.)

Q. During the years from 1940 to 1944, inclusive, do you know who was the Business Agent for that union?      A. R. M. Tomson.

Q. During that period did you have dealings with him from time to time in connection with the union business with the company?

A. Yes, I did.

Q. Do you know of your own knowledge whether, during those years, from time to time Mr. Tomson would make requests that certain employees be discharged by your company because they were not members in good standing with his union?

A. I believe he did make that request on occasion.

Q. Who in your plant was given the responsibility or the duty of attending to that matter?

A. Usually Mr. Gallardo.

Q. That is the witness that just left the stand, is that correct?      A. That is right.

Q. Can you fix approximately when you first became aware of efforts by the CIO to organize the workers in your plant?

A. Well, just roughly I would say the fall of 1945; fall and summer of 1945.

Q. What occurred at that time, that you know of?

A. Well, not a great deal, just talk by some of the men around the plant that the CIO was interested in organizing the company, but aside from that, there was nothing very much.

(Testimony of Raymond G. Hume.)

Q. Was there any occasion during the year 1945 when there was any stoppage of work in the plant?

A. Would you repeat that again?

Trial Examiner Myers: Will the reporter please read the question to the witness?

(The question was read.)

A. Yes.

Q. When did that occur during the year 1945?

A. That occurred on November 20th.

Q. Was it in the day time or in the evening?

A. Well, the trucks were tied up in the evening.

Trial Examiner Myers: Of the 19th?

The Witness: Of the 19th, and the plant was picketed on the morning of the 20th.

Q. (By Mr. Agee): Does your company have any trucks of its own to haul produce into the plant?

A. We have a truck.

Q. One truck?

A. One truck; not satisfactory for our hauling purposes.

Q. Your hauling is done by outside trucking concerns?

A. That is correct.

Q. When you speak of the trucks being stopped or held up on the evening of November 19, 1945, you mean trucks operated by outside concerns?

A. Yes, by the E. G. Swanson Company.

Q. Of Sacramento?

A. No. Turlock.

Q. And the following morning you mentioned a picket line. Did that picket line have any insignia

(Testimony of Raymond G. Hume.)

or designation that they carried to indicate what their affiliation was?      A. AFL.

Q. Was the plant in operation on that day in question?

A. Couldn't operate; didn't have any raw supply.

Q. Were there workers that were admitted or got into the plant and took their stations ready to go to work?      A. On the 20th, yes.

Q. There were no operations that day, because there was no spinach?      A. No raw supply.

Q. On the following day, November 21st, what were the conditions in that respect that existed there at the commencement of the work day?

A. Well, we would be allowed to operate and haul the spinach into the plant, provided certain workers were eliminated by us.

Q. Who was it that made that demand upon you?      A. Mr. Torreano.

Q. Who was Mr. Torreano, and what was his position? [319]

A. He was the head of the AFL Local 22382.

Q. When that demand was first made, was it oral or was it in writing?      A. Oral.

Q. Was it communicated directly to you, or over the telephone?

A. The first I knew of trouble existing was when the trucks were tied up that night of the 19th. Then the next day the demand was made orally——

Trial Examiner Myers: By whom?

The Witness: By Mr. Torreano.

(Testimony of Raymond G. Hume.)

A. (Continuing): —that certain men be eliminated from the plant before we could start our operations.

Q. Was that followed up by a written demand?

A. That was immediately followed up by a letter. I believe that was over the telephone. I cannot recall exactly.

Q. But in any event it was immediately followed up by a letter?

A. It was immediately followed up by a letter, which he followed up in person with a written demand.

Q. And Mr. Torreano brought it down to the plant personally?      A. He did.

Q. And it was delivered to you?

A. It was.

Q. Was anything said by him as to what would happen if the company did not comply with the union demand to dismiss these men?

A. Could not operate.

Q. Is it possible for your plant to operate unless the trucks haul the produce into the plant?

A. No.

Q. In other words, your plant is completely tied up, unless you can get the trucks in and out, is that correct?      A. Right.

Q. And the trucks drivers coming in and out of the plant were all affiliated with what union?

A. I believe the AFL Teamsters.

Q. When you got this demand from the union,

(Testimony of Raymond G. Hume.)

did you communicate to the employees that were involved or listed?      A. Yes.

Q. Do you recall where you were and where they were when you communicated that to them?

A. In front of the boiler room.

Q. On the plant premises?

A. Yes, on the plant premises.

Q. Do you recall whether or not all of the men who appeared upon the list were present at that time?      A. No, I do not.

Q. Who was it that made the statement on behalf of the company to the men that their dismissal had been requested by the union? [321]

A. Mr. Heagle.

Q. Were you present when he read off the list?

A. I read a list of names to Mr. Heagle. I presume that most of the men were present, and later I went to the warehouse personally and dismissed the warehouse crew, who were also on this list.

Q. And the meeting in front of the boiler room with Mr. Heagle and these other men present, what part did Mr. Heagle take in that discussion? What did he say in substance? Did he read off anything to the men?

A. I believe I handed him the memorandum with the names on it, and he called off the names on this list, stating that I said that they would be laid off.

Q. Before Mr. Tomson had been relieved or divested of his office as Business Agent of the union, had Mr. Heagle been a shop steward under him?      A. Yes.

(Testimony of Raymond G. Hume.)

Q. At the time, then, Mr. Tomson was divested of his office as Business Agent, was Mr. Heagle also divested of his office as shop steward?

A. I do not believe right at the moment that Tomson left, but shortly thereafter.

Q. At the time in question, that is, November 20, 1945, was Mr. Heagle then acting as shop steward?      A. No.

Q. After this discussion in front of the boiler room, did these men that were in that meeting leave the plant?      A. Yes.

Q. Do you know whether they returned or attempted to return the next day?

A. I was not present, but I heard they attempted to return.

Q. On the following day, November 21, 1945, was the plant in operation?

A. On November 21st?

Q. Yes.      A. Yes, it was.

Q. Was the picket line thrown across the gateway to the plant on that date? If you know.

I had better ask first: were you there?

A. No, I was not there at that time of the morning.

Q. About what time on November 21, 1945, did you arrive at the plant?

A. I think it was around 10:30 or 11:00 in the morning.

Q. On November 21st, when you got there, at that time the plant was then in operation, was it?

A. Yes, it was.



(Testimony of Raymond G. Hume.)

Q. Spinach had been hauled in in the meantime, had it?      A. That is right.

Q. At the time you got there, were any of these employees whose names had appeared upon this list that we have mentioned, did you see any of them present in or about the plant? [323]

A. There were quite a few of the employees around the plant—not in the plant—they were around it. I will say it this way: they were off the property, but they were around.

Q. Before March 1, 19—withdraw that.

The existing contract that you had with Local 22382, that is, the one that existed during the month of November, 1945, by its terms was to expire on what date?      A. March 1st of 1946.

Q. Before March 1, 1946, were you given a demand by the union, that is, by the AFL union, that you sign up an exclusive bargaining contract with them, with closed shop provisions?

A. We were asked to, yes.

Q. Was that asking accompanied by any statement as to what would happen if you did not comply with that request?      A. It was intimated.

Q. That what?

A. That we would not be able to operate.

Q. In your opinion, had you not entered into the contract which you subsequently did, with that union, would your plant have been able to operate?

A. We know that it would not, because we did not enter into any agreement until the absolute

(Testimony of Raymond G. Hume.)

deadline. The trucks were tied up, so therefore we were forced to enter into an agreement.

Q. The agreement that you entered into under those circumstances was made on what date?

A. March 25, 1946.

Q. Between March 1, 1946, and March 25, 1946, what occurred in connection with the operation of the plant or the stoppage of operation of the plant?

A. Trucks were not allowed to come in or out of the warehouse. We were not operating at the time. The picket was placed down by the warehouse, so that no trucks could come in or out.

Trial Examiner Myers: Do you mean by that, that you could not operate on account of the picket line?

The Witness: No. I mean that we could not make any truck shipments from our warehouse.

Trial Examiner Myers: But if this situation did not arise, would you have been in production?

The Witness: No, we would not have been in production.

Trial Examiner Myers: When would you have started production?

The Witness: March 25th.

Trial Examiner Myers: That was your ordinary date?

The Witness: That was the start of our spinach season. Up until that time we had not been operating.

Trial Examiner Myers: But if things were run-

(Testimony of Raymond G. Hume.)

ning smoothly, without any trouble at all, when would you have started your spinach? [325]

The Witness: That same day.

Trial Examiner Myers: That same day?

The Witness: Yes.

Trial Examiner Myers: So anything than transpired between the 1st of March and the 25th of March has nothing to do with your plant at all, is that it?

The Witness: It has only to do with it to this extent, that we were not allowed to ship any truck shipments of canned goods out of the warehouse.

Trial Examiner Myers: You would have ordinarily shipped some out during that period?

The Witness: Yes.

Trial Examiner Myers: But you would not have received anything in during that period?

The Witness: We could not receive anything in.

Trial Examiner Myers: Ordinarily, I mean.

The Witness: Well, ordinarily we receive a few things in, but they are not major necessity.

Q. (By Mr. Agee): Between March 1, 1946, and March 25, 1946, the bulk of the work or operations there would consist of shipments going out of the plant from the warehouse?

A. That is correct.

Q. And those shipments of course are customarily hauled by truck, are they? [326]

A. Partially rail, partially truck.

(Testimony of Raymond G. Hume.)

Q. Were any shipments during that period made out of the plant by way of rail?

A. Yes.

Q. Were any shipments during that period made out of the plant by way of trucks? A. No.

Q. You say there was a picket line maintained during that period? A. Correct.

Q. By whom? A. The AFL.

Q. Did the Teamsters who were driving the trucks observe that picket line? A. They did.

Q. None of them went through? A. No.

Q. You knew that if the picket line was maintained, that no incoming trucks could haul produce into the plant, is that correct?

A. That is correct.

Q. March 25th. Do you recall the day of the week that would be?

Trial Examiner Myers: You have a calendar right behind you.

Mr. Agee: Oh.

Q. (By Mr. Agee): That would be a Monday?

A. Monday the 25th, yes.

Q. That was the day, was it, that this contract was signed up, pursuant to the demand of the union? A. Yes.

Q. Did the company commence canning operations on March 25th and carry on continuously thereafter? A. We did.

Q. Mr. Hume, on March 25, 1946—and will you please answer this just yes or no—did you on that

(Testimony of Raymond G. Hume.)

date have an opinion as to *was* the majority union among the workers there in the plant?

Mr. Edises: Just a moment, please.

Read the question, please.

Mr. Agee: Let me reframe it, and then he can object to it before it is answered.

Trial Examiner Myers: Do you withdraw the question?

Mr. Agee: Yes, I do. It is very poorly worded.

Q. (By Mr. Agee): Did you, on March 25, 1946, have an opinion as to whether the majority of your employees at that time were members of this AFL union mentioned here, or whether a majority of your members were either affiliated with some other union or unaffiliated with any union?

Mr. Agee: Just a minute. Do not answer. There is an objection.

Mr. Edises: That calls for a yes or no answer.

Mr. Agee: That is right.

Mr. Edises: O.K.

Mr. Agee: Now will you answer the question?

A. Yes.

Q. (By Mr. Agee): Did you make any investigation, or cause any investigation to be made, or from what sources did you have any information to enable you to make up your opinion on that matter?

Mr. Jennings: I would object to that, Mr. Examiner. Obviously it is getting into the question of the state of mind of the employees in the Hume plant, something that the Board is endeavoring to

(Testimony of Raymond G. Hume.)

ascertain in the representation proceeding, and which it is the function of the Board to ascertain. That proceeding was then pending before the Board. Object on the further ground that the state of mind of the employees in the Hume plant is immaterial, because that is one plant in the C. P. & G. unit, and even though all of them might desire to be represented by one union, the unit is not the Hume plant but the entire C. P. & G.

Trial Examiner Myers: Will you read the question, please.

(The question was read.)

Trial Examiner Myers: You had better reframe the question. [329]

Q. (By Mr. Agee): Do you have any information that you had received prior to March 25, 1946, concerning the matter upon which you just stated you did have an opinion?

Mr. Jennings: Same objection.

Mr. Edises: I will join in that objection, adding the further ground, Mr. Examiner, that the representation proceedings——

Trial Examiner Myers: I know, but I think your objections are premature. That is what I am trying to ascertain.

Will you read that question, please?

(The question was read.)

Mr. Edises: That too calls for a yes or no answer.

(Testimony of Raymond G. Hume.)

Trial Examiner Myers: I will overrule the objection. Do you want the question read?

The Witness: Please, may I have the question?

(The question was read.)

A. No.

Mr. Edises: What was the answer?

(The answer was read.)

Q. (By Mr. Agee): Upon what did you base your opinion which you said you had on March 25, 1946?

A. Only the fact that we had always been AFL.

Q. And your previous contracts had always been with AFL? A. That is correct.

Q. Had the company ever had any previous contracts with any other union organization than the AFL? A. No.

Q. When I speak of the "AFL," we both understand that we mean 22382, is that correct?

A. Right.

Mr. Agee: You may cross-examine.

#### Cross-Examination

By Mr. Tobriner:

Q. Mr. Hume, calling your attention to this contract with 22382 which you just referred to, Board's Exhibit 8, what was its relationship, if any, to the green book contract? Is it a fact that you continued to recognize the green book contract



(Testimony of Raymond G. Hume.)

except for the subject matter of Board's Exhibit No. 8?      A. Yes.

Q. Was Board's Exhibit No. 8 a contract with 22382, AFL?

Mr. Jennings: Objected to, Mr. Examiner, as calling for a conclusion of the witness.

Trial Examiner Myers: Sustain the objection.

Mr. Jennings: The contract speaks for itself.

Q. (By Mr. Tobriner): Do you deal with 22382?      A. Yes.

Mr. Tobriner: That is all.

Trial Examiner Myers: Mr. Jennings, any questions?

Q. (By Mr. Jennings): I will show you, Mr. Hume, a list which has been identified by Mr. Birchall. Is that list in your handwriting? [331]

A. It is.

Q. Can you tell me what that list purports to be, or what it is?

A. That is a list of names of people that were on our payroll (it so states at the top) on November 19th, who were not on our payroll on November 21st.

Trial Examiner Myers: What do you mean by that? They were fired, or laid off?

The Witness: I do not mean that. I mean exactly what I say.

Trial Examiner Myers: What happened?

The Witness: I made a comparison between the two payrolls. Some of the people no doubt were laid off, because I laid off some people, but this

(Testimony of Raymond G. Hume.)

list is not representative of the people that I laid off.

Q. (By Mr. Jennings): I will show you——

First of all, there are a total of names of 33 men and 32 women, is that correct?

A. I do not know offhand.

(After examining document.) There are 33 men, all right, according to these numbers here. 32 women.

This is not in my handwriting (indicating).

Q. I think Mr. Birchall identified that second part as his handwriting.

Showing you No. 22 in the list of names of men, J. M. Smith, do you know Mr. Smith?

A. J. M. Smith? Offhand, I do not recall him.

Q. Do you know whether or not he was one of those who was laid off?

A. I would have to see the list on that.

Q. I can tell you his name is not on the list, Mr. Hume. A. Then he was not.

Q. Do you know Mr. Oscar Johnson?

A. Oscar Johnson?

Q. He was the young fellow employed as a warehousemen in November of 1945. He was then about 19 years old, I think.

A. I probably know him by sight.

Q. Do you remember whether or not he was working in the warehouse at that time?

A. On November 19th?

Q. Yes. A. Offhand, no.

Trial Examiner Myers: Why do you say that

(Testimony of Raymond G. Hume.)

Smith was not laid off on November 20th? Because his name is not on that list?

The Witness: I laid off a certain group of people that I read off their names to, and anybody else that was not there on the 21st, I did not have anything to do with. That is what I am driving at.

Trial Examiner Myers: You mean, the 20th?

The Witness: Well, the 20th.

Trial Examiner Myers: That is when you read the list?

The Witness: That is right, on the 20th.

Trial Examiner Myers: A man by the name of Moore, whose name is not on that list, Board's Exhibit 8, according to the testimony was laid off because somebody from the union called up and said that by mistake they forgot to include the name of Moore. Do you remember that incident?

The Witness: I believe Mr. Moore—he was in the warehouse, and it was assumed that the whole warehouse was on the list, and I laid off the warehouse, so Mr. Moore was included.

Trial Examiner Myers: You do not know where Mr. Smith was working?

The Witness: Mr. Smith? Offhand, no.

Q. (By Mr. Jennings): You say you laid off the entire warehouse crew? A. Yes.

Mr. Jennings: That is all.

Mr. Edises: No questions.

Mr. Agee: I would just like to ask one more question, if I might.

(Testimony of Raymond G. Hume.)

Redirect Examination

By Mr. Agee:

Q. I show you Board's Exhibit 7, headed, "Dues Collections and Check-off," and ask you if that was the agreement that you entered into with 22382 on August 21, 1944?      A. Yes.

Q. At the time, and following the execution of this agreement, did you cause the employees in the plant to be notified of the execution of the agreement?

A. I believe at that time we posted a notice that we were on a check-off system from here on out. I mean, from that time out.

Q. From whom did the demand come for the execution of that agreement?

A. The check-off agreement?

Q. Yes.      A. Mr. Tomson.

Q. He was then the Business Agent of 22382?

A. He was.

Mr. Agee: I think that is all.

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Jennings: I have nothing.

Trial Examiner Myers: You are excused, Mr. Hume. Thank you very much.

(Witness excused.)

Mr. Agee: At this time we would like to offer the letter of February 27, 1946, to the Honorable Jack Z. Anderson, signed by Paul M. Herzog, which

was referred to by Mr. St. Sure in his examination yesterday, and coupled with his statement at that time that if those copies were not satisfactory, he could furnish a photostat of the original and attach it to the record.

Mr. Jennings: May we go off the record just a minute?

Trial Examiner Myers: Off the record. We will take a short recess, and you can discuss that.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Jennings: Ready.

Trial Examiner Myers: Will you call your next witness, please, Mr. Agee?

Mr. Jennings: Mr. Examiner, with respect to the copies of a letter dated February 27, 1946, now marked Hume Exhibit No. 4 for identification, of course I have no knowledge concerning the matter, but upon Mr. St. Sure's statement that he knows that such a letter was written, and that he has a photostat of the original, I have no objection upon the ground of authenticity. I do object upon the ground of immateriality, and parenthetically I can say that if the Chairman of the Board did not write that letter, of course——

Mr. Agee: He will know about that.

Mr. Jennings: ——he will know that he did not.

Trial Examiner Myers: Is there any other objection? [336]

(No response.)

Trial Examiner Myers: The letter is already in the record, so there is no use of my sustaining your objection.

Mr. Jennings: I believe a great part of it has already been read. That is correct.

Trial Examiner Myers: So I will overrule the objection and receive the letter in evidence, and ask the reporter to please mark it as Hume's Exhibit No. 4.

(The document referred to was marked Hume's Exhibit No. 4, and was received in evidence.)

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#### HUME EXHIBIT No. 4

Honorable Jack Z. Anderson  
House of Representatives  
Washington, D. C.

Dear Congressman Anderson:

I hasten to reply to your letter of February 25 with reference to the difficult situation faced by the California cannery industry. My colleagues and I realized that, unless both unions were willing to exercise self-restraint, some of these problems might arise as a result of our recent decision setting aside the October elections. I am sure, however, that you would not have wanted the Board to reach any

decision other than that which a majority of us thought was required as a matter of good conscience under the law.

The language in the opinion to which you allude was simply a declaration of the law as we see it and as the courts have interpreted it. It is true that the Board could not and did not order the employers to take or refrain from taking any particular action in this representation case in the same sense that it would have had power to do so in an unfair labor practice proceeding. We nevertheless considered it our duty to call the parties' attention to their rights and obligations under the law, so that they might govern their conduct accordingly between now and the time a new election can be conducted. It would certainly have been less fair to say nothing on the subject, and then to take action against the employers later, if they engage in the conduct which we believe would be unlawful. It certainly will not be the Board's fault if either or both labor organizations see fit to try to force the employers into a situation which may require them, in order to save their crops, to disregard their obligations under the National Labor Relations Act.

You may, therefore, wish, perhaps with other members of the California Delegation, to call upon either or both of the competing labor organizations to exercise the self-restraint suggested above in the interest of the welfare of the people of California and the nation. I am sure that the United States Conciliation Service would be available to offer assistance in this matter.



We do not see how we can modify the recent decision as you suggest, so as to expressly authorize the C. P. & G. to renew the old contract with the AFL in its present form. It should be remembered that a closed shop agreement is only valid under Section 8(3) of the Act if it is made with a labor organization which represents a majority of the employees when made. One could hardly say that the A. F. of L. union surely does represent such a majority as of March 1946, in view of the continued pendency of the Board's election case and, indeed, of the results of the very election that was set aside.

Moreover, the Board has frequently held it to be an unfair labor practice for an employer to grant exclusive recognition to a union during the pendency of an election case, primarily because such action would inevitably favor the recognized faction as against any other union which might be on a future ballot.

The Board Members are not blind to the practical problems presented and fully understand the appeal for help that is coming from the industry. This, however, can hardly justify us in failing to administer the Act as written and as construed by the courts. The ideal solution would be to have an extremely early new election. We would be only too glad to do that if anyone can suggest a basis upon which a representative-sized vote can be polled, with proper procedural safeguards, at an early point in the 1946 season.

Very sincerely yours,

/s/ PAUL M. HERZOG,

Chairman.

Mr. Jennings: Two of the other gentlemen, Mr. Bishop and Mr. Berry, who are named in the charge, are here. I assume nobody wants to examine them?

(No response.)

(Whereupon, Mr. Bishop and Mr. Berry left the court room.)

Mr. Agee: May I proceed, Mr. Examiner?

Trial Examiner Myers: Certainly.

Mr. Agee: I would like to read in the record an excerpt from the transcript of the proceedings before the National Labor Relations Board in the matter of Bercut-Richards Packing Company, Case No. 20-R-1414, et al., which took place at Washington on January 24, 1946.

Trial Examiner Myers: What is this, the oral argument?

Mr. Agee: No, this is a statement by Mr. Reilly, a member of the Board. [337]

Trial Examiner Myers: During the oral argument?

Mr. Jennings: That is correct.

Mr. Agee: The lines on these pages are not numbered, but I am referring to page 91, and to the five lines that go to make up the second paragraph appearing on that page. For the sake of convenience, I will add what appears above it, so as to include what Mr. Jennings has in mind, and we can get it all in at once. That would commence on page 90, at the bottom of the page.

Mr. Jennings: I might say, Mr. Examiner, that

the part Mr. Agee wants to read is a paragraph immediately following the portion of the argument which I offered as Board's Exhibit 6.

Trial Examiner Myers: Very well.

Mr. Edises: I want to make an objection to the reading of the extract referred to. As I understand it, it is a statement made by Mr. Reilly, a member of the Board, in the course of oral argument. Mr. Reilly, although a member, is of course not the Board but merely a member of the Board, and consequently anything that he stated would be merely the opinion of a member of the Board.

Second, anything that he said in the course of oral argument could not be deemed an order, nor could it be deemed to have any operative effect of any kind.

Trial Examiner Myers: That goes to the weight of the evidence, your objection, not to its admissibility.

Mr. Edises: I want to suggest, then, that before——

Trial Examiner Myers: Mr. Jennings offered something in there. Mr. Reilly asked a question. Mr. St. Sure answered that question. Now Mr. Agee wants to show what transpired after that. I think he has a perfect right to do that.

Mr. Edises: Mr. Examiner, may I say that what Mr. Jennings offered in evidence was a statement by counsel for the Respondent in this case, and consequently it had the effect of serving as an admission. What is intended to be offered here is not admissible on any rule of evidence that I know of,

because it is the statement, not of an agent for any of the parties, but of a member of the Board.

Trial Examiner Myers: We will just take that into consideration. Overruled.

Mr. Agee: "Mr. Reilly: I do not see why there should be any confusion on that point, because our Order was very explicit. Nothing of a legal nature has transpired as yet to give anybody any rights at all. We have not changed the bargaining agent for anything that happened, yet."

Trial Examiner Myers: When did that take place?

Mr. Agee: On January 24, 1946.

Trial Examiner Myers: That preceded the issuance of the Supplemental Decision in that case?

Mr. Agee: Yes, that is correct. We offer it in connection with our actions taken on March 25, 1946, in signing up the contract which is in evidence with the AFL.

Other than the witness Fordham who is on his way here, we have no further evidence.

Mr. Jennings: I have one further matter which I have discussed with counsel, Mr. Examiner.

Trial Examiner Myers: All right. Go ahead.

Mr. Jennings: May it be stipulated by counsel that if Harry E. Pierson and Clyde Faddis were called as witnesses herein, their testimony would be substantially the same as that of the other employees named on Board's Exhibit 9, who have testified in this proceeding?

Mr. Agee: So stipulated.

Mr. Edises: So stipulated.

Mr. Tobriner: So stipulated.

Mr. Jennings: So stipulated.

Trial Examiner Myers: Very well, sir.

What about Smith? What is your position there, Mr. Jennings?

Mr. Jennings: So far as I can ascertain, Mr. Smith is in Los Angeles at the present time.

Trial Examiner Myers: He is not here, but I mean, as to what happened? Was he one of the fellows that were laid off on November 20th? Is that your contention? [340]

Mr. Jennings: That is my contention, that he was a seasonal worker who was in the group which gathered in front of Mr. Fordham's office on November 21st.

I have only an affidavit from Mr. Smith, and I have never interviewed him, Mr. Examiner, but I have the affidavit here. That is all I have.

Mr. Edises: As I understand the facts, Smith was admittedly an employee of the company. There is no question about that.

Mr. Agee: I don't know. No one has ever so stated to me.

Mr. Jennings: The record, Mr. Examiner, indicates that Mr. J. M. Smith was on the list of those who were working on the 19th of November, and not working on the 21st.

Trial Examiner Myers: That is right.

Mr. Agee: That is correct.

Trial Examiner Myers: The record shows that. This paper is not in evidence. Is anybody going to introduce it in evidence? (Indicating document).

Mr. Edises: I will offer that.

Trial Examiner Myers: Is there any objection?

Mr. Agee: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as CIO Exhibit No. 1. [341]

(The document referred to was marked CIO Exhibit No. 1, and was received in evidence.)



new on payroll Nov 1947 not on Nov 20 47

307

1. Neal Watts x
2. A.E. Moore x
3. Carl P. Peterson x
4. Leo Lombardo x
5. C. B. Bishop x
6. Harry Pierson x
7. R. B. White x
8. Arthur E. Berry x
9. H. F. Fryer x
10. J. J. Cobb x
11. Abe Thiesen x
12. Irvin E. Deagle x
13. R. F. Rearick x
14. Thomas Buel x
15. Clifford C. Luther x
16. Valer M. Ojofinski x
17. Charles H. Fenschknicht x
18. Fred O. White x
19. Marcel Robinson x
20. Clara Kueger x
21. Vanden Hartonck x
22. J. M. Smith x
23. W. E. Rogers x
24. Clyde O. Fadden x
25. J. S. Bruchars x
26. W. J. Fly x
27. J. Royal Parkman x

Deposed and no recollection  
 Deposed and recollection  
 Have not seen with work  
 failed to work

28. R. F. Williams x
29. Harold Bellard x
30. Andy Richardson =
31. Charles L. Young \*
32. Oscar Johnson \*
33. Archie Miller x \*

Witness On Nov 19 not on Nov 20

1. Margaret Watts x \*
2. Ruth Waite x \*
3. Syrus Stephens x \*
4. Hazel Cole \*
5. Mary Pantogopolus \*
6. Bonnie Stewart \*
7. Catherine Hobbs \*
8. Bertha Wharton \*
9. Ruby Richey \*
10. Dove Rogers \*
11. Geraldine Adams \*
12. Mary Jones \*
13. Stella Hobbstad \*
14. Ida O. F. Gowers \*

NATIONAL LABOR RELATIONS BOARD

CASE NO. 1221

IN THE MATTER OF E. W. Howe

DATE 4/11/46 WITNESS

ETHEL E. FISHER, OFFICIAL REPORTER

BY L. Brecha

EXHIBIT NO. 15

16. Shelma Blackwood

17. Lucille Miller \*

18. Nina Rice

19. Pauline Emfinger

20. Shorty McNamee

CIO #1





- 21 Margaret George \* quit for other reasons.
- 22 Genevieve Alous \*
- 23 Myrtle Brown ✓ \*
- 24 Elmer Robinson \*
- 25 Carlisle Wright \*
- 26 Helma Maples \* new job
- 27 Dorothy Miller \*
- 28 Helen Abel
- 29 Lula Walker
- 30 Lenora Benner
- 31 Mary Ann Cole
- 32 Louise Castro.

1 man = not on list  
 6 men \* not on list  
 3 men =  
12 men \* on list  
 33



Trial Examiner Myers: We will take a short recess until Mr. Fordham gets here.

Mr. Tobriner: Mr. Trial Examiner, I have one witness. Perhaps we could go ahead with him.

Trial Examiner Myers: Mr. Fordham will be here any minute now, and it will break up the continuity of the situation, if you go ahead.

Mr. Agee: I might say that although he will be back as soon as Mr. Gallardo gets down to relieve him at Turlock, in the interests of time, I have already stated to counsel the substance of what I was going to question him about, so if Mr. Tobriner could be allowed to go on?

Trial Examiner Myers: All right. Is that agreeable to everybody?

Will you call your witness, Mr. Tobriner?

Mr. Tobriner: Mr. King.

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### WESLEY KING

a witness called by and on behalf of the Respondent Unions, International Brotherhood of Teamsters, et al., being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Wesley King.

Trial Examiner Myers: Where do you live, Mr. King?

The Witness: 535 North Orange, Modesto.

(Testimony of Wesley King.)

Trial Examiner Myers: You may be seated.

You may proceed, Mr. Tobriner.

Q. (By Mr. Tobriner): Mr. King, what is your present position?

A. Business Representative, Local Union 22382, AFL.

Q. How long have you held that position?

A. Since June 12, 1945.

Q. Did you ever hold that position prior to that time?

A. Yes. I held that position July 5, 1943, until October 2, 1944.

Q. In such capacity, are you familiar with the records, papers, documents and files of 22382?

A. I am.

Q. I now show you a document which I will ask the reporter to mark for identification, entitled "Memorandum of Agreement Entered into this 3rd day of July, 1941, by and between G. W. Hume Company and the American Federation of Labor, Cannery Workers Union No. 22382."

(Thereupon the document above referred to was marked AFL Exhibit No. 3 for identification.)

Q. (Continuing) I show you this document, and I ask you if that is a document found among the files and records of 22382? A. Yes.

Q. Are you familiar with the signature of R. M. Tomson? A. Yes. [243]

Q. What position did he hold in 22382?

A. Secretary-Treasurer.

(Testimony of Wesley King.)

Q. Is that his signature upon that document?

A. Yes.

Mr. Tobriner: I ask that this be entered as AFL Exhibit No. 3.

Mr. Jennings: No objection.

Mr. Edises: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as AFL Exhibit No. 3.

(The document heretofore marked AFL Exhibit No. 3 for identification was received in evidence.)

### AFL EXHIBIT No. 3

#### MEMORANDUM OF AGREEMENT

This Memorandum of Agreement, made and entered into this 3rd day of July, 1941, by and between the G. W. Hume Co., and the American Federation of Labor, by and through its Western Office, the National Council of Cannery and Process Workers, and The Cannery Workers Union No. 22382, an affiliate of the American Federation of Labor, adopt the attached printed agreement and promise to be bound thereby,

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

1. That the attached printed agreement, which represents a collective bargaining agreement be-

(Testimony of Wesley King.)

tween the California Processors and Growers, Inc., and the American Federation of Labor through its Western Office, and the National Council of Cannery and Process Workers, and the Cannery Workers Unions chartered by the American Federation of Labor, be and the same is hereby adopted as to all its contents (excepting, however, in reference or references to the California Processors and Growers, Inc., that in their place and stead shall be substituted the name of the cannery or canneries signatory hereto as though they were direct parties to the printed agreement), and the contents of said printed agreement are hereby incorporated herein by this reference, with the same force and effect as if fully set forth herein.

2. That the terms of said agreement, in their entirety, shall be operative as of the date hereof, subject to acceptance in writing by all parties hereto.

3. That upon such acceptance, the wage provisions of said agreement, as distinguished from all other provisions, shall be effective retroactively to and including April 16, 1941.

4. That any disputes or differences concerning the amount or extent of such retroactive pay shall be subject to adjustment. As regards Section 8 of the collective bargaining agreement adopted herein it is specifically understood that the Adjustment Board will consist of 3 representatives of the Em-



(Testimony of Wesley King.)

ployer party to this agreement, and 3 representatives of the Union party to this agreement.

5. Retroactive pay will be paid not later than July 10, 1941.

G. W. HUME CO,  
(Employer)

By R. G. HUME,  
Vice Pres.

CANNERY WORKERS UNION  
#22382 A. F. of L.,  
(Union)

By .....  
President.

By R. M. TOMSON,  
Secy.-Treas.

---

Mr. Tobriner: May I ask leave to substitute for that a photostatic copy?

Trial Examiner Myers: Two copies, yes.

Mr. Tobriner: Two copies.

I ask the reporter to mark for identification this document, reading "This is to Certify AFL Cannery Workers Union No. 22382 hereby represents the majority of its employees in the Turlock plant of G. W. Hume Company are members of the union," with signatures attached.

(Thereupon the document above referred to was marked AFL Exhibit No. 4 for identification.)[344]

(Testimony of Wesley King.)

Mr. Agee: What is the date of that?

Mr. Tobriner: The date of that is January, 1942.

Mr. Edises: January?

Mr. Tobriner: The 26th day of January, 1942.

Q. (By Mr. Tobriner): I will show you this document, marked AFL Exhibit No. 4, and ask you if you recognize the signature on that document?

A. I recognize the signature, Tomson.

Mr. Tobriner: I ask this be admitted as our Exhibit No. 4.

Trial Examiner Myers: Any objection?

Mr. Jennings: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as AFL Exhibit No. 4.

(The document heretofore marked AFL Exhibit No. 4 for identification was received in evidence.)

#### AFL EXHIBIT No. 4

This to certify that A. F. of L. Cannery Workers Union, No. 22382, Stanislaus County, California, hereby represents that a majority of the employees in Turlock plant of G. W. Hume Company located at Turlock, California, are members of said union and individually for themselves and as a unit have designated said union as their representative for collective bargaining.

(Testimony of Wesley King.)

The said union hereby adopts that certain agreement made and entered into on the 26th day of January, 1942, by and between California Processors and Growers, Inc., for and on behalf of certain canning companies, and the Western Office of the American Federation of Labor, and National Council of Cannery and Process Workers for and on behalf of certain cannery workers unions, and promises to be bound thereby.

By authority of the Union.

CANNERY WORKERS UNION,  
STANISLAUS COUNTY, NO.  
22382,

By A. C. BURROUGHS,  
President.

By R. M. TOMSON.  
Secretary.

Dated: January, 1942.

This is to certify that upon the representation of Cannery Workers Union, Stanislaus County, No. 22382, that a majority of the employees in Turlock plant of G. W. Hume Company located at Turlock, California, are members of said union and have designated said union as their representative for collective bargaining, the undersigned hereby adopts that certain agreement made and entered into as of the 26th day of January, 1942, by and between California Processors and Growers, Inc., for and on behalf of certain canning companies, and the

(Testimony of Wesley King.)

Western Office of the American Federation of Labor and National Council of Cannery and Process Workers for and on behalf of certain cannery workers unions, and promises to be bound thereby.

G. W. HUME COMPANY,

By R. G. HUME,

Authorized Officer.

Dated: January, 1942.

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Mr. Tobriner: Will the reporter please mark, "Certify 22382 represents a majority of employees at Turlock plant of G. W. Hume Company," dated August 13, 1943, Exhibit No. 5 for identification?

(Thereupon the document above referred to was marked AFL Exhibit No. 5 for identification.)

Q. (By Mr. Tobriner): I show you our Exhibit No. 5 for identification, and ask you if you recognize the signature? [345]

A. I recognize the signature of Tomson.

Q. You have already testified Tomson was the Business Agent of 22382?

A. Secretary-Treasurer.

Q. Secretary-Treasurer of 22382?

A. Yes.

Mr. Tobriner: I ask that AFL Exhibit No. 5 be admitted into evidence.

(Testimony of Wesley King.)

Trial Examiner Myers: Any objection?

Mr. Jennings: None.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as AFL Exhibit No. 5.

(The document heretofore marked AFL Exhibit No. 5 for identification was received in evidence.)

#### AFL EXHIBIT No. 5

This is to certify that A. F. of L. Cannery Workers Union, No. 22382, Stanislaus County, California, hereby represents that a majority of the employees in Turlock plant of G. W. Hume Company located at Turlock, Calif., are members of said union and individually for themselves and as a unit have designated said union as their representative for collective bargaining.

The said union hereby adopts that certain agreement made and entered into on the 10th day of July, 1943, by and between California Processors and Growers, Inc., for and on behalf of certain canning companies, and The American Federation of Labor, and California State Council of Cannery Unions for and on behalf of certain cannery workers unions, and promises to be bound thereby.

(Testimony of Wesley King.)

By authority of the Union.

CANNERY WORKERS UNION,  
STANISLAUS COUNTY, NO.  
22382,

By RALPH HAME,  
President.

By R. M. TOMSON,  
Secretary.

Dated: August 13, 1943.

This is to certify that upon the representation of Cannery Workers Union, Stanislaus County, No. 22382, that a majority of the employees in Turlock plant of G. W. Hume Company located at Turlock, Calif., are members of said union and have designated said union as their representative for collective bargaining, the undersigned hereby adopts that certain agreement made and entered into as of the 10th day of July, 1943, by and between California Processors and Growers, Inc., for and on behalf of certain canning companies and The American Federation of Labor and California State Council of Cannery Unions for and on behalf of certain cannery workers unions, and promises to be bound thereby.

G. W. HUME COMPANY,  
By R. G. HUME,  
Authorized Officer.

Dated: September, 1943.

(Testimony of Wesley King.)

(Testimony of Wesley King.)

Mr. Tobriner: May I ask for these last two exhibits the same permission the Trial Examiner gave us with respect to the prior one, that they may be withdrawn and that we may make duplicates?

Trial Examiner Myers: You may substitute copies in lieu of the originals.

Mr. Tobriner: Will you please mark this for identification as Exhibit No. 6, AFL?

It is entitled "Memorandum of Agreement made and entered into this 25th day of March, 1946, by and between G. W. Hume Company and Cannery Workers Local 22382," with various other names after it.

(Thereupon the document above referred to was marked AFL Exhibit No. 6 for identification.)

Mr. Jennings: Mr. Examiner, that is merely the original of Board's Exhibit 8.

Mr. Tobriner: I still want it in.

Trial Examiner Myers: What is the purpose of having it go in?

Mr. Tobriner: The purpose of this, Mr. Trial Examiner, is to show the seal on this original copy, that is not on the other.

Q. (By Mr. Tobriner): I show you this exhibit, No. 6, and I ask you if you know the signature of H. C. Torreano.           A. Yes, I do.

Q. What is his position?



(Testimony of Wesley King.)

A. He is Senior Business Representative of Local Union 22382.

Q. Is this his signature?

Trial Examiner Myers: What was his position at the time that paper is supposed to have been signed?

The Witness: Senior Representative.

A. Yes, that is his signature.

Q. I call to your attention that this Memorandum of Agreement reads, "entered into this 25th day of March, 1946, by and between G. W. Hume Co. located at Turlock, California, hereinafter referred to as Employer, California State Council of Cannery Unions, AF of L, and Cannery Workers Union, Local 22382, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, AF of L, hereinafter referred to as the Union."

Is there such an organization as Local 22382, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers?

A. There is not.

Q. Will you explain to me, then, how it is that it appears in this document?

Mr. Jennings: Mr. Examiner, is this an effort to controvert the contract? The contract speaks for itself.

Trial Examiner Myers: You have not laid any foundation for this man's knowledge.

Mr. Tobriner: He is the Business Agent of 22382.

Trial Examiner Myers: You are asking him

(Testimony of Wesley King.)

something about some other union. Does he know anything about the Teamsters?

Mr. Tobriner: I am going to ask him.

Q. (By Mr. Tobriner): Is 22382 affiliated with the International Brotherhood of Teamsters?

A. No.

Q. How does it occur, then, that that is in the paper?

A. These Memorandum of Agreements were all mimeographed in the Oakland Office for the Council of Cannery Unions, and this must be a typographical error by the girl that done the mimeographing. [348]

Q. Are there some organizations that are affiliated with the International Brotherhood of Teamsters? A. Yes.

Q. I ask you to check the seal on this original document. Will you read that into the record?

A. "Cannery Workers Union No. 22382, Modesto, California." In the center of the seal it is, "American Federation of Labor."

Trial Examiner Myers: Did you put that seal on the paper?

The Witness: The girl in the office probably put it on. She is in charge of the sealing.

Trial Examiner Myers: Did you see her do it?

The Witness: Pardon?

Trial Examiner Myers: Did you see her do it?

The Witness: That is one of her duties. I did not see her do it.

(Testimony of Wesley King.)

Trial Examiner Myers: Do you know when it was put on, or by whom?

(No response.)

Trial Examiner Myers: You do not know when that was put on, or by whom, isn't that right?

The Witness: I could not give you a definite answer.

Q. (By Mr. Tobriner): Do you know when Mr. Torreano signed it? [349]

A. Yes, I know when he signed it. He signed it on the 25th day of March, because I came to Modesto and got it. I took it back down for his signature at the time he and Mr. Hume entered into an agreement.

Q. Do you know of any organization known as Local 22382, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers operating in this area? A. I do.

Q. Is Local 22382 operating under the constitution and by-laws which I now show you as AFL Exhibit No. 2 A. It is.

Q. Do those by-laws provide for any affiliation with the International Brotherhood of Teamsters?

A. No.

Mr. Tobriner: I ask this now be introduced as our exhibit No. 6, next in order.

Trial Examiner Myers: Any objection?

Mr. Edises: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will

(Testimony of Wesley King.)

ask the reporter to please mark it as AFL Exhibit No. 6.

(The document heretofore marked AFL Exhibit No. 6 for identification was received in evidence.)

Q. (By Mr. Tobriner): Mr. King, during the time that you were acting as Business Agent for 22382, did you ever have occasion to visit the Hume plant? A. Yes.

Q. You did? What was the period that you acted in that capacity?

A. The Hume plant was on my route from July, 1943, until the following spring. I do not remember just what month we changed.

Q. How often did you visit the plant, approximately? A. Once to three times a week.

Q. What did you do when you went there?

A. Well, contacted the different stewards we had in the plant to pick up any grievances they might not have been able to settle in the plant, took them up with Management. About once a month we had a book check at the door of the cannery when the people went to work of a morning, to see if they were all dues-paying members.

Q. Did you ever check the employees to see whether or not they were paid up in their dues?

A. About once a month, during the operating season, the months they were operating.

Q. What did you do if you found anyone who was not paid up?

(Testimony of Wesley King.)

A. We immediately called the attention of the company officials there to the fact that they were not paid up, and if they refused to pay up, they were notified by the company—— [351]

Mr. Jennings: Object to that, Mr. Examiner, as obviously outside the knowledge of this witness, not responsive to the question.

Trial Examiner Myers: Move to strike?

Mr. Jennings: Move to strike it out.

Trial Examiner Myers: Strike it out, the whole answer. Read the question to the witness.

(The question was read.)

A. I notified them that they must pay their dues into the union if they intended working there. If they refused to do so, I notified the company.

Q. When the company was notified, what happened?

Mr. Jennings: Object to that as outside the witness' knowledge; no foundation laid.

Trial Examiner Myers: Overruled.

First of all, did you ever notify the company of any employee who was delinquent in his payment of dues?

The Witness: Yes, two or three times I did.

Trial Examiner Myers: Who did you notify?

The Witness: One time Mr. Fordham, and the rest of the time Mr. Galloti, or whatever his name is.

Trial Examiner Myers: When did this take place?

(Testimony of Wesley King.)

The Witness: During that period that I—that was one of my plants as Business Agent.

Trial Examiner Myers: Was it this year or last year? [352]

The Witness: During the summer of 1943 and the spring of 1944.

Trial Examiner Myers: Can you fix it any better than that?

The Witness: It probably would have been in August or September, in the summer, and then the spinach run in the fall and the spinach run again in the spring.

Trial Examiner Myers: Do you know when you took the matter up with Mr. Fordham?

The Witness: It was in the peach season, '43.

Trial Examiner Myers: Who was the employee involved?

The Witness: I do not remember his name. I just remember it was a new employee there.

Trial Examiner Myers: What happened when you told Mr. Fordham that the man was not in good standing?

The Witness: I told him the man refused to pay his union dues, and that the union requested his dismissal.

Trial Examiner Myers: Was it a new employee?

The Witness: Yes.

Trial Examiner Myers: Then what happened?

The Witness: Mr. Fordham notified him to go to the office and get his **check**.

(Testimony of Wesley King.)

Trial Examiner Myers: And was the man discharged?

The Witness: He was discharged.

Trial Examiner Myers: What about the other cases? Were they new employees? [353]

The Witness: They were new employees. If you will allow me, I would like to explain about new employees.

Trial Examiner Myers: Go ahead.

The Witness: New employees at that time, we were collecting cash. There wasn't any check-off and they had ten days to complete their application. They signed an application upon going to work, and if it was not completed in ten days, they were notified by the union that they must complete it, and then if they did not complete it, the company was notified. Then these two particular instances, that is what was done in them.

Trial Examiner Myers: They were new employees, and they did not pay the balance, and you told the company about it, and the company discharged them, is that correct?

The Witness: That is correct.

Trial Examiner Myers: Go ahead.

Q. (By Mr. Tobriner): Were there any other instances when you went out to the company and found dues had not been paid in full?

A. Not on regular work.

Q. Were there any other instances in which you went out and found that employees had not paid



(Testimony of Wesley King.)

their dues, and you notified the company, and the employees were retained on the payroll?

A. No.

Mr. Tobriner: That is all.

Trial Examiner Myers: Any questions?

Mr. Edises: I have a few questions, Mr. Examiner.

Mr. Jennings: I have none.

### Cross-Examination

By Mr. Edises:

Q. What is your present position, Mr. King?

A. Business Representative of Local Union 22382, AFL.

Q. Is that an elective office? A. No.

Q. How did you get that position?

A. I have the credentials in my pocket, if I may present them, to show how I got the position.

Trial Examiner Myers: He is not doubting it. He just wants to know how you got the job.

A. (Continuing): Daniel Flanigan, Director of the Western Organization, appointed me to that job.

Q. When was that? A. June 1, 1945.

Q. What was your job before that?

A. I was——

Mr. Tobriner: Objected to.

Trial Examiner Myers: Overruled.

A. I was unemployed.

Q. Where were you living during this period of unemployment?

(Testimony of Wesley King.)

Mr. Tobriner: Objected to on the ground that where he was employed before is immaterial.

Trial Examiner Myers: Overruled. [355]

He did not ask him where he was employed. He said, "What were you doing before that?" and the witness said he was unemployed.

How long were you unemployed, Mr. King?

The Witness: October to June 12; October, 1944, until June, 1945.

Q. (By Mr. Edises): What was your address during that period?

Mr. Tobriner: Objected to.

Trial Examiner Myers: Overruled.

A. 313 Vine Street.

Q. Where? A. Modesto.

Q. What work did you do before that time of unemployment?

A. I worked for the Cannery Workers Union, 22382.

Q. In what capacity?

A. Business Agent.

Q. With what labor organization, if any, is Local 22382 now affiliated?

A. The American Federation of Labor.

Q. What kind of a union is it?

A. Federal labor union.

Q. You, I take it, are employed on a salary?

A. That is correct.

Q. Who pays your salary?

Mr. Tobriner: Objected to. It is not the purpose of the Board nor this investigation to deter-

(Testimony of Wesley King.)

mine the internal affairs of this union, who pays him or how much it is.

Trial Examiner Myers: Overruled. Who pays you?

The Witness: What do you mean by who pays me?

Trial Examiner Myers: Do you get a check?

The Witness: You mean, Flanigan? It is paid by Mr. Flanigan.

Q. (By Mr. Edises): Who is Mr. Flanigan?

Mr. Tobriner: He has testified to that already. It is in the record.

Trial Examiner Myers: Overruled.

A. He is Supervisor of Local Union 22382.

Q. What is his union affiliation? A. AFL.

Q. Mr. Flanigan is Western Representative of the International Brotherhood of Teamsters, is he not?

A. I would have to refuse to answer that, because I could not answer you correctly.

Q. The fact is, Mr. Flanigan is an official of the AFL Teamsters Union, is he not?

Mr. Tobriner: Objected to.

Trial Examiner Myers: Overruled. [357]

Mr. Tobriner: First of all, he is arguing with the witness, Mr. Trial Examiner. He asked him twice now.

Trial Examiner Myers: Overruled.

A. The only position that I know that Mr. Flanigan has is Director of the Western Organiza-

(Testimony of Wesley King.)

tion for the eleven western states for the American Federation of Labor.

Q. What connection, if any, does Mr. Flanigan have with the Teamsters Union?

A. I told you I could not answer you honestly. He might carry a card in the Teamsters, or something like that.

Q. Have you any card or paper or check stub or anything which would show the name of the outfit that pays you? A. No, I do not think I have.

Q. Look through your cards, will you please?

Mr. Tobriner: I object to Mr. Edises peering over the witness' shoulder at his personal effects. After all!

Trial Examiner Myers: Just step back, please.

Mr. Tobriner: There are certain privacies.

Q. (By Mr. Edises): Did you find it?

A. This is the only thing I have. (Exhibiting document to counsel.)

Trial Examiner Myers: How are you paid? By check?

The Witness: Yes, sir.

Trial Examiner Myers: Whose check did you say? Flanigan's check?

The Witness: Flanigan signs the check.

Q. (By Mr. Edises): Where is the office of Local 22382 located?

A. 329 South 99 Highway, Modesto.

Q. Who is your immediate superior?

A. H. C. Torreano.

Q. What is Mr. Torreano's job?

(Testimony of Wesley King.)

A. Senior Business Representative of Local 22382.

Q. Who is Mr. Torreano's superior?

A. Mr. Flanigan.

Q. Do you know a Mr. Einar Mohn?

A. Yes, sir.

Q. What is his position?

Mr. Tobriner: Stipulated that he is an International Representative of the International Brotherhood of Teamsters.

Mr. Edises: I will accept the stipulation.

Mr. Jennings: So stipulated.

Q. (By Mr. Edises): What connection, if any, does Mr. Mohn have with Local 22382?

A. Not any, that I know of.

Q. Do you have contact with Mr. Mohn in the course of your duties? A. I do not.

Q. When did you last see Mr. Mohn? [359]

A. I believe in Sacramento in—if I am wrong about the month, it is just a mistake. I do not remember. I believe it was in December that we had a joint conference of canneries, setting up the Western Council of Cannery Unions.

Q. Do you know a Mr. Dave Beck?

A. I have never met the man personally, no. I have heard of him.

Trial Examiner Myers: You have heard of him, have you not?

The Witness: I say, I have heard of him, but I have never met him personally.

(Testimony of Wesley King.)

Q. (By Mr. Edises): Is there a Teamsters' organization, or is there a Truckdrivers organization in Modesto? A. Yes.

Q. What is the name of that organization?

A. I think it is Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 386.

Q. Local Union No. 386?

A. I believe that is correct.

Q. Who are the officials of that union?

Mr. Tobriner: Stipulate that Wendell Kiser is the—I know their names, but I do not know their official positions. I can give you their names, if that is what you want. Mr. Kiser is Secretary.

Q. (By Mr. Edises): Can you explain how it happens, Mr. King, that according to your testimony, Local 22382 is not an affiliate of the Teamsters, whereas various other of the AFL cannery locals are?

A. Well, I can tell you what I have heard, but I have never been to one of the meetings.

Q. You are an official. Now tell me your understanding as an official of that fact.

A. That they had meetings in those different local unions and voted to transfer from the Federal Labor Union and affiliates to the Teamsters International.

Q. Have you received any financial assistance from the Teamsters?

Mr. Tobriner: Objected to on the ground that that goes into the internal workings and affairs of

(Testimony of Wesley King.)

the union, and has no bearing on this particular situation.

Trial Examiner Myers: Overruled.

When you say "you," you mean whom?

Mr. Edises: The union, 22382.

Trial Examiner Myers: Overruled.

A. I am not the Secretary-Treasurer. I am just a Business Agent. I would not know if there had been.

Q. You stated that Mr. Torreano is an official of 22382? A. That is correct.

Q. Do you know any other job that he has?

A. No, I do not.

Q. Did you ever hear of an organization known as "Cannery Warehousemen, Food Processors, Drivers and Helpers Local Union No. 748?" [361]

A. That is correct.

Q. What is that organization?

A. That is a cannery workers organization.

Q. What is its jurisdiction?

A. Stanislaus, Merced Counties.

Q. Does Mr. Torreano have anything to do with that organization?

Mr. Tobriner: Stipulated that he does have.

A. Yes, he does have. It is a Receivership Charter.

Q. That organization is affiliated with the International Brotherhood of Teamsters, is it not?

Mr. Tobriner: So stipulated.

Trial Examiner Myers: Let the witness testify, will you please?



(Testimony of Wesley King.)

Q. Is it, Mr. King? A. That is right.

Q. Do you have any connection with any other labor organization besides 22382?

A. What do you mean by "connection?"

Q. Member or officer.

A. Officer of another organization? No, I am not an officer.

Q. Are you connected in any way with any other labor organization?

A. I do a certain amount of Business Agent work for 748.

Q. That is the Teamsters Local?

A. That is a cannery workers union.

Q. Affiliated with the Teamsters?

A. That is correct.

Q. What work do you do for that Teamsters Local?

A. Similar work, or exactly the same work as the Cannery Union, 748.

Q. Is 22382 paying per capita tax to the American Federation of Labor?

A. I could not answer that.

Q. What did you say your position was with the union? A. Business Representative.

Q. Who would know the answer to that?

A. Mr. Flanigan, I imagine. He is Supervisor.

Q. Where does Mr. Flanigan hold forth? Where does he hang out?

Trial Examiner Myers: You mean, where is his office?

Q. Where are his offices?

(Testimony of Wesley King.)

A. I believe they are in the Golden Gate Building in San Francisco.

Trial Examiner Myers: On the letterhead of the Cannery Workers' Union, his address is 606 Tenth Street, Modesto. Isn't he ever there?

The Witness: No. That office has been moved out on the highway. He was there at that office at that time. I can give you the correct address of that office, if you want it, Mr. Flanigan's office. [363]

Q. (By Mr. Edises): In San Francisco?

A. Yes.

Q. No. All I am interested in knowing is whether he is in Modesto. You say his office is in San Francisco?

A. 700 Golden Gate Building.

Q. Who receives the dues that are obtained from the members of 22382?

A. They are made out to the local union.

Q. What happens to them after that, after they are received?

A. Well, I imagine they are banked.

Q. Who does it?

A. I told you I had no connection with the money or the Secretary-Treasurer's job whatever. I am just a Business Agent working in the field, so I could not give you a definite answer on it.

Q. Does Mr. Flanigan come down and personally collect those dues?

A. I don't think there are any dues personally collected. They are all mailed in by check, on the check-off.

(Testimony of Wesley King.)

Q. To whom is the check sent?

A. Cannery Workers' Union.

Q. Here in Modesto? A. That is correct.

Q. And you and Mr. Torreano are the local officials, are you not, of that union?

A. No. There is Mr. Torreano, myself, and Herb Carmen.

Q. Who handles the financial matters?

A. Mr. Torreano handles all the office work.

Q. Would Mr. Torreano know whether any per capita dues had been paid to the American Federation of Labor? A. I cannot answer.

Mr. Tobriner: Objected to.

Trial Examiner Myers: If he knows. He might know.

The Witness: I said I could not answer.

Trial Examiner Myers: Do you know?

The Witness: No. I said I could not answer that, because I do not know.

Trial Examiner Myers: Doesn't the constitution provide for per capita tax?

Mr. Edises: The constitution I believe provides for per capita tax, Mr. Examiner, but I would be very much interested to find out just what has happened in that regard.

Mr. Tobriner: I can understand how counsel might be interested in our internal history, but I do not think——

Trial Examiner Myers: You know why he wants to know, don't you, because you deny that you have

(Testimony of Wesley King.)

any connection with the Teamsters, and he wants to show that you have.

Mr. Edises: I submit that we certainly are entitled to check into this matter, in view of that very peculiar contract which has been offered in evidence. [365]

Trial Examiner Myers: Go ahead.

Q. (By Mr. Edises): Mr. King, have you ever been convicted of a felony? A. Yes.

Mr. Tobriner: Object.

Q. The answer is "Yes." Will you state the circumstances? A. I don't think I would.

Trial Examiner Myers: What was the answer?

Mr. Edises: The answer was yes, but he refuses to state the circumstances.

Mr. Tobriner: Object. I do not believe he has a right to ask him that question.

Mr. Edises: I have a right to test the credibility of the witness by asking if he has been convicted of a felony.

Mr. Tobriner: You can ask that, but not the circumstances.

Mr. Edises: I have a right to inquire as to the kind of felony he was convicted of.

Mr. Tobriner: Object.

Mr. Edises: I submit I have a right to ask.

Trial Examiner Myers: Will you please go ahead and stop this discussion between the two of you?

Q. (By Mr. Edises): What were you convicted for, and when? A. I refuse to answer.

(Testimony of Wesley King.)

Mr. Edises: I ask that the witness be instructed to answer.

Mr. Tobriner: Object to the question.

Trial Examiner Myers: I will direct him to answer. Overrule the objection.

The Witness: What was that?

Mr. Edises: You have been directed to answer.

The Witness: I still refuse to answer.

Q. (By Mr. Edises): Are you on probation at the present time? A. I am.

Mr. Tobriner: Object.

Trial Examiner Myers: Overruled.

Q. (By Mr. Edises): Do you receive a pay check in connection with your work as Business Representative of Teamsters Union 748?

A. I receive a check from the Cannery Workers Union, 748.

Q. That is affiliated with the Teamsters, is it not? A. That is correct.

Q. Do you receive any other pay check?

Mr. Tobriner: The question has been asked and answered now a number of times. Object.

Trial Examiner Myers: Overruled.

A. That would be the expense account. I have an expense account, but no other checks.

Mr. Edises: Will you find the testimony of the witness about ten minutes ago, where I was asking him about his pay check?

Trial Examiner Myers: Off the record. [367]

(Discussion off the record.)

Trial Examiner Myers: On the record.

(Testimony of Wesley King.)

Q. (By Mr. Edises): Mr. King, in what capacity does Mr. Flanigan sign your pay check?

A. Supervisor of the local union, I believe.

Q. Local 22382? A. Yes.

Q. Does he sign any pay checks as a Teamsters official? A. No.

Q. In other words, you receive only one pay check, and that is as a Teamster representative?

A. As a Cannery Workers representative.

Trial Examiner Myers: What is the name of that union?

The Witness: Cannery Workers' Union.

Q. (By Mr. Edises): No. 748?

A. I think the full name is the Cannery Workers, Food Processors, Warehousemen, Drivers and Helpers, No. 748, affiliated with the International Brotherhood of Teamsters.

Trial Examiner Myers: And that is the only check you get?

The Witness: That is right, outside of expense checks when I go out of town. 22382 or 748; it could be either one, according to the financial status of the union at that time.

Trial Examiner Myers: You mean if 22382 had enough money to pay your expenses, it would pay them? [368]

The Witness: That is right.

Trial Examiner Myers: And if it did not, then 748 would pay them?

The Witness: That is right, and it would be reimbursed by 22382.

Trial Examiner Myers: And your salary is paid by 748?

(Testimony of Wesley King.)

The Witness: Mine is.

Trial Examiner Myers: How long has 748 been paying your salary?

The Witness: I believe since December.

Trial Examiner Myers: '45?

The Witness: '45.

Trial Examiner Myers: Who paid it before that?

The Witness: 22382.

Mr. Edises: I have no further questions of this witness.

I would like to ask Mr. Tobriner if he will be kind enough to produce Mr. Torreano.

Mr. Tobriner: I do not know if I can produce Mr. Torreano. It is a very late moment to ask for that.

Mr. Edises: I would not have asked for it if it had not been for the testimony of your witness, Mr. King. Now I want to get things cleared up.

Mr. Tobriner: What testimony do you want? We will stipulate.

Mr. Edises: I want to clear up the status of this so-called "Federal Union".

Mr. Tobriner: We will make a statement on the record.

Mr. Edises: I do not care to accept any statement on the record. I want to ask the questions of Mr. Torreano.

Mr. Tobriner: As a matter of fact, Mr. Trial Examiner, the whole affairs of this union have been gone into at great length.

Mr. Jennings: Mr. Trial Examiner, that was in the Bercut-Richards case.



(Testimony of Wesley King.)

Trial Examiner Myers: That record is not before me.

Mr. Tobriner: I am asking for it to go in. There is no use in going through the whole thing all over again.

Mr. Edises: I object.

Trial Examiner Myers: What are you objecting to?

Mr. Tobriner: He wants me to get Mr. Torreano.

Trial Examiner Myers: And you cannot get him. All right. Let him pursue whatever remedy he has. Don't just say "I object". He has not said anything yet.

Does anyone want to ask Mr. King any further questions?

Mr. Tobriner: Just one question.

#### Redirect Examination

By Mr. Tobriner:

Q. You know all the Teamsters and AFL unions in this vicinity, do you not?

A. That is right.

Q. Is there any organization that is known as "Local 22382, [370] International Brotherhood of Teamsters"?

A. There is none.

Mr. Tobriner: That is all.

Trial Examiner Myers: You are excused, Mr. King. Thank you very much.

(Witness excused.)

Trial Examiner Myers: Have you any other witnesses you want to call, Mr. Tobriner?

Mr. Tobriner: No other witnesses.

Trial Examiner Myers: Has Mr. Fordham appeared yet?

Mr. Agee: He has not arrived.

Trial Examiner Myers: We will take a short recess, and I will allow counsel to figure out what they want to do, before we proceed further.

(Whereupon, a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Jennings: Ready.

Mr. Agee: Ready.

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### F. D. FORDHAM

a witness called by and on behalf of the Respondents, G. W. Hume Company and California Processors & Growers, Inc., being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: F. D. Fordham.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: F-o-r-d-h-a-m.

Trial Examiner Myers: Where do you live, Mr. Fordham?

The Witness: Turlock.

(Testimony of F. D. Fordham.)

Trial Examiner Myers: You may be seated, sir.  
You may proceed, Mr. Agee.

Q. (By Mr. Agee): Are you employed by the Hume Company of Turlock?

A. Yes, sir.

Q. What is your position?

A. Factory Superintendent.

Q. Have you been Factory Superintendent since the year 1940, including 1940?

A. Yes, sir.

Q. Calling your attention to the morning of November 21st of 1945, were you on the job that day at the plant?

A. Yes, sir, I was.

Q. Were you summoned on that date by the watchman employed by the company?

A. Yes, sir.

Q. Can you recall at about what time that occurred?

A. Approximately 10:00 o'clock. [372]

Q. In the morning? A. Yes, sir.

Q. Where were you at the time your watchman called you?

A. I was in what we call the "cook room", the cannery, down in the factory.

Q. Where did you go immediately after being called by the watchman?

A. To the door, the door of the factory in front of the office where the help comes in.

Q. Did you see any persons gathered there?

A. Yes, sir.

(Testimony of F. D. Fordham.)

Q. Who were they, without reference to names? Were they employees?

A. Employees and—yes, and some of the union men.

Trial Examiner Myers: What union?

The Witness: 22382.

Q. (By Mr. Agee): Approximately how many employees were gathered there?

A. Oh, I would say about 40, 50, maybe. It is pretty hard to tell.

Q. Did you have a conversation with any of those employees at that time and place?

A. Yes, I did.

Q. Did any of those employees speak to you?

A. Yes, sir. [373]

Q. What were the names of the employees who spoke to you?

A. The only one that spoke to me was Heagle, Mr. Heagle.

Q. What did he say to you and what did you say to him?

A. He asked me if they could come in and go to work, and I told him not until they cleared with the union, meaning 22382.

Q. Was anything said by you as to what these men who had been gathered there should do? That is, did you say, "Stay," or "Go away," or what?

A. I told them to go away. That is, I told them to get off the property, that is what I told them, until they cleared with the union.

(Testimony of F. D. Fordham.)

Q. You mean by that, Local 22382, is that correct?      A. Yes, sir.

Q. Did you say anything on that occasion about the men being fired?      A. No, sir.

Q. Did you use the word "fired" at all?

A. No, sir.

Q. When you spoke to Mr. Heagle, did you speak in a voice loud enough to be heard by these gathered employees?

A. I expect I did. I expect I did, because they were all close together.

Mr. Agee: You may cross examine.

Trial Examiner Myers: Mr. Tobriner?

Mr. Tobriner: No questions.

Trial Examiner Myers: Mr. Jennings?

#### Cross-Examination

By Mr. Jennings:

Q. Did you tell the employees why they could not work, Mr. Fordham?

A. I simply told them they would have to clear with the union, that was all.

Q. Have you told us everything that you said?

A. So far as I can remember, I have.

Q. Do you remember anything else that you said?

A. No, I don't think I said anything else, because then they just left. That was all there was to say.

Q. You addressed yourself to this entire group of employees that were there?

(Testimony of F. D. Fordham.)

A. Yes. I was talking directly to Mr. Heagle, but of course the whole group were together. He was standing right with them.

Mr. Jennings: That is all.

Mr. Edises: No questions.

Mr. Agee: No further questions.

Trial Examiner Myers: Did you know an employee there by the name of Smith, John Smith?

The Witness: No, I cannot say that I did.

Trial Examiner Myers: You do not remember him?

The Witness: I don't know. There are a lot of the employees [375] that I don't know their names, anyway. I know their faces, but I am Superintendent, and the other foremen and foreladies know their names. I don't.

Trial Examiner Myers: You are excused, sir, unless somebody else has any further questions.

(No response.)

Trial Examiner Myers: Thank you very much, Mr. Fordham.

(Witness excused.)

Trial Examiner Myers: Do you rest, Mr. Agee?

Mr. Agee: Yes, we do.

Trial Examiner Myers: Have you any further witnesses you wish to call, Mr. Tobriner?

Mr. Tobriner: No.

Trial Examiner Myers: Mr. Edises, do you wish to call any witnesses?

Mr. Edises: No, we have no independent testimony to present.

Trial Examiner Myers: You have no evidence you wish to introduce, is that right?

Mr. Edises: No, other than to ask the Examiner whether he would have the authority to issue a subpoena.

Trial Examiner Myers: I have authority to issue subpoenas.

Mr. Edises: Then I wish to request a subpoena for Mr. Torreano of the Teamsters Union.

Trial Examiner Myers: I will issue the subpoena for Mr. [376] Torreano.

When do you want it returned?

Mr. Edises: This afternoon.

Trial Examiner Myers: Very well. We will take a recess, then, until I issue the subpoena for Mr. Torreano.

(Whereupon, Mr. Torreano entered the court room.)

Trial Examiner Myers: Do you want to call Mr. Torreano?

Mr. Edises: Yes.

Will you take the stand?

Mr. Tobriner: I would like a little recess, Mr. Examiner, if you please.

Mr. Edises: I want to ask that counsel be instructed not to confer with his witness, under the circumstances.

Mr. Tobriner: Mr. Trial Examiner, I think when a witness who was subpoenaed at two minutes to four walks into a room, he should have a chance to know what the entire matter is all about.



Trial Examiner Myers: You are not calling the witness, Mr. Tobriner.

Will you take the stand, Mr. Torreano?

Mr. Torreano: No. You can serve one on me, then.

Mr. Edises: You are going to walk out?

Trial Examiner Myers: Take the stand, Mr. Torreano. Raise your right hand.

Mr. Torreano: Let him serve a subpoena on me.

Trial Examiner Myers: Stay where you are, Mr. Torreano, and I will give you one.

Will you write out a subpoena, Mr. Jennings?

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Jennings: Yes.

Mr. Edises: Yes.

Mr. Examiner, prior to the recess, as you know, I had asked that Mr. Torreano be produced.

Trial Examiner Myers: Are you going to call him?

Mr. Edises: May I——

Trial Examiner Myers: No. I do not want anything on the record about it.

Mr. Edises: Mr. Examiner, I do wish to get on the record the fact——

Mr. Tobriner: I want to object on the record, too, on the facts, Mr. Examiner, please.

Trial Examiner Myers: All right. Go ahead.

Mr. Edises: The fact that after the request to produce Mr. Torreano was rejected by counsel, Mr. Torreano walked into the room, and at that time he was asked by me to take the witness stand.

Mr. Tobriner: I think we are getting a lot of ex parte statements here. If Mr. Edises wants to testify, let him take [378] the stand.

Trial Examiner Myers: You can give your version of what took place, and he can give his. Let us go on.

Mr. Edises: Mr. Torreano was likewise asked by the Trial Examiner to take the witness stand and declined, stating that if we wanted him, we could serve him with a subpoena. The attorney for the FTA then asked for the issuance of a subpoena, which was granted by the Trial Examiner, and we then took the subpoena out and tried to find Mr. Torreano. We have been unable to find him, he evidently being a little too fast for us.

Mr. Tobriner: Let us have that stricken.

Trial Examiner Myers: All right. Never mind that.

Mr. Edises: The subpoena is now in the office of the Sheriff, with a request on our part that Mr. Torreano be found and served. However, I have no reason to doubt that we will be able to produce Mr. Torreano in time for the continuance of the session this afternoon. I feel that in the present state of the record, probably there will be no special urgency in our insisting that the hearing be continued for tomorrow. I am particularly ready to take that position because of the fact that I am urgently required to be in San Francisco tomorrow myself.

So, under the circumstances, we shall not insist that Mr. Torreano be produced, and you may deem this a withdrawal of our request for a subpoena.

Trial Examiner Myers: All right. Then will you withdraw the subpoena from the Sheriff?

Mr. Edises: Correct.

Mr. Tobriner: So that the record might be clear, let it show that I would be glad to produce Mr. Torreano if I had only had sufficient notice in advance, in fact, would have produced him myself if I could have gotten him at the time. But, when he entered the room he was confused by all the things that happened here so quickly, and had I the opportunity to tell him that he had been subpoenaed, he would have been able to be here to testify, but counsel did not afford me that opportunity.

Trial Examiner Myers: Have you anything further you wish to introduce, Mr. Edises?

Mr. Edises: No, we have nothing further.

Trial Examiner Myers: Any rebuttal. Mr. Jennings?

Mr. Jennings: No rebuttal, no other witnesses, no other evidence.

Trial Examiner Myers: Mr. Agee, have you any other witnesses you wish to call?

Mr. Agee: We have not.

Trial Examiner Myers: Or any other evidence you wish to introduce?

Mr. Agee: We have not.

Trial Examiner Myers: Mr. Tobriner? [380]

Mr. Tobriner: We have not.

Trial Examiner Myers: Have you any other witnesses you wish to call.

Mr. Tobriner: I have not.

Trial Examiner Myers: Or any other evidence you wish to introduce?

Mr. Tobriner: I have not.

Trial Examiner Myers: Will you argue orally, Mr. Jennings? Just confine yourself to your contentions.

Mr. Jennings: Before that, I would like to move to amend the Complaint to conform with the proof as to the names of employees, spelling of names, dates, and such minor matters. There is no intention to vary the substance of the Complaint.

Trial Examiner Myers: Any objection?

Mr. Agee: No objection.

Trial Examiner Myers: Motion granted, without objection.

Mr. Tobriner: I have no objection to it.

Mr. Trial Examiner, are we going to argue orally and also submit briefs?

Trial Examiner Myers: You may do either, or both.

Mr. Tobriner: I am willing to submit it on briefs.

Trial Examiner Myers: You may submit a brief.

Mr. Tobriner: I mean, if everyone else is.

Trial Examiner Myers: I just want to get your contentions.

Argument on Behalf of the National Labor  
Relations Board

Mr. Jennings: I merely state as my contention, Mr. Examiner, that there are in this case actually only two issues.

First of all, with respect to 22382, whether or not this contract required employees to maintain membership in the union. It is my contention that obviously the contract does not so require, and I should like to cite the Pittsburg Plate Glass Company case, decided last month by the Board, in which it appeared that there had been a history of cooperation for a number of years between the company and the union, in an effort to get employees to become members of the union. The Board said that was not sufficient. If you are going to sign a closed shop, you have to sign a closed shop agreement.

The parties here did not sign a closed shop contract. Therefore they had no right under the law to discharge the employees who failed to maintain their membership in the union.

I should like to point out to the Examiner that every one of those employees cleared through the union before going to work.

The second question in the case is whether or not the contract signed on March 25, 1946, is a lawful contract. For at least three reasons it is not.

In the first place, that contract purports to cover only the employees of the Hume Company. The Board, in the Bercut-Richards case, 20-R-1414, found at the request of the California Processors &

Growers, Inc., that the appropriate unit was all the members of C. P. & G., which includes the Hume Company. The contract therefore obviously does not cover an appropriate unit, and is illegal for that reason.

It is illegal for the further reason that the contract was made at the time the question of representation was made before the Board. I need cite to the Trial Examiner only the cases referred to by the Board in the Supplemental Decision of February 15th.

Finally, the contract is invalid because it is clear from the record in this case that the contracting union or the union which purported to be the contracting union does not exist.

I should like to say further very briefly with respect to the 8 (1) allegation of the Complaint, that in requiring employees to sign dues check-offs, in urging employees to sign those check-offs and become members of the union, the Respondent clearly violated Section 8 (1) of the Act, because there is nothing in the contract which permitted the Respondent to do those things.

The 8 (1) I think is clear, Mr. Examiner. I need not state it any further.

Trial Examiner Myers: Mr. Agee?

Argument on Behalf of the Respondents G. W. Hume Company and California Processors and Growers, Inc.

Mr. Agee: It is our position, Mr. Examiner, that the election held during the month of October, [383]

1945, having been declared to be a void election, its legal effect has been completely erased and wiped out, and the parties stand here the same as they would had no such election ever been called or held.

It is our contention that the bargaining agent that we had dealt with for the years 1940 to 1944, inclusive, and that until a new bargaining agent was certified by the Board, that it was our legal duty to negotiate with and deal with the bargaining agent that we had dealt with in all of the previous years.

It is our contention that the contract covering the period from March 1, 1945 to March 1, 1946, was in existence and was effective and valid during all of that period of time, and that we were required to live up to the terms and provisions of that contract.

It is our position that although the rule of law is that a contract speaks for itself and the matter of the legal effect or interpretation of the contract is ordinarily a question for the court to determine, as a matter of law, that where the parties to a contract, by a series of acts had interpreted it, that that evidence is admissible and material to interpret the terms and provisions of the contract.

It is our position that we were enforcing and carrying out a closed shop contract from March 1, 1945 to March 1, 1946, [384] and that all of the alleged acts committed during that period by the company were consistent with the contract, as we interpret it, and that nothing was done in violation of law or the contract by the company.



It is our contention that on March 1, 1946, when the previous contract expired, that it was not only our privilege but it was our duty to continue to negotiate with this bargaining agent that we have negotiated with in the past, and that the contract of March 25, 1946 was signed up under those circumstances.

It is our further contention that the question of public necessity enters into this entire case, and that we were faced with an absolute work stoppage which we demonstrated, and which is not disputed, if we did not make a contract with the union that we did deal with.

It is our contention that these crops would have lain out in the field and spoiled. They would not have been processed or canned. They would have been lost at the time of a national emergency, as far as that goes, a national emergency in the food situation, and without a decision that was binding in legal effect, the cannery was put in the position of acting in the manner that they thought best. They have been advised in this matter. They followed the advice of their advisors.

Trial Examiner Myers: Mr. Tobriner?

Argument on Behalf of the Respondents,  
International Brotherhood of Teamsters, et al.

Mr. Tobriner: The case resolves itself into two issues, fundamentally issues of law, not of fact.

The first issue involves these alleged unfair practices in discharging or in letting go certain em-

ployees. There is no fundamental argument on the facts on that issue. There is no doubt the employees were let go.

The question is whether or not the employer was justified in so doing. We do not have to refer to any cases. We refer to the decision of the National Labor Relations Board in this case.

There are two decisions. The first decision is the decision rendered by the National Labor Relations Board in its direction of elections and decisions and order issued on October 12, 1945, on page 3. I will read the entire paragraph.

Trial Examiner Myers: Which paragraph?

Mr. Tobriner: Page 3, the second paragraph.

Trial Examiner Myers: You mean the AFL?

Mr. Tobriner: That is right, yes.

Trial Examiner Myers: You do not have to read it. Tell me the contention.

Mr. Tobriner: They find here that there is a valid contract, and that the certification of representatives which may issue as a result shall be solely for the purpose of designating a bargaining representative to negotiate a new contract to become effective upon the expiration of the existing contract, which, if I read English, means existing contract or valid contract.

The contract that existed here was a contract which operated up to March 1, 1946. Hence the discharges which occurred here operated or occurred under the existing contract sanctioned by the National Labor Relations Board. But, the sanction of the National Labor Relations Board does

not depend merely on the second paragraph of its Direction of Elections. The Board took occasion to reiterate its conclusion, and the reiteration occurs in the second decision of the National Labor Relations Board. That is called "Supplemental Decision and Order." The date of that is February 15, 1946. That is a month and a half ago.

There again the Board took occasion to remark about this contract under which this employer agreed with this union, and that is referred to by the Board in very precise language. There is no occasion for any question as to it.

On page 5 of the decision, at the bottom of page 5 just before the footnote:

"In this state of the record," says the Board, "No legal effect may be given the closed-shop provision contained in the current collective bargaining agreements after their expiration date; . . ."

Which certainly means again, if I can understand the language (or perhaps I cannot) it seems to me to say that in this state of the record legal effect may be given the closed shop provision contained in the current collective agreements up to their expiration date. If that is not exactly what the Board has ruled on this very contract now before this Trial Examiner, I simply cannot understand the language. But, of course, it may be double talk. It is possible that the National Labor Relations Board is going to take the position that the employer is bound by a closed shop contract which he must live up to up to the expiration date. It is also bound by a valid contract which is supposed

to subsist until an election, and yet, by being bound by the contract under the order of the National Labor Relations Board, in some manner also is liable to a penalty under the National Labor Relations Act to be for the performance of the order of the National Labor Relations Board.

The situation and position of the Regional Office of this National Labor Relations Board under those two orders, to my mind is beyond understanding. How it can be expected that an employer is bound by these decisions upon which the Regional Office relies and certainly is bound itself, and yet at the same time is able to bring an unfair practice charge against the employer and collaterally affect the union by claiming that there is a violation of the Act in the performance of those contracts, I simply cannot understand. I think that this kind of procedure is unfair to the employer, because the employer is bound to recognize these decisions, so far as they go and as far as they are binding. [388]

Aside from the decisions themselves, the testimony has shown that for years the contract between the union, 228382, and the employer was regarded and was carried out as a union shop or closed shop contract; to use the Board's language, "closed shop." If there was any doubt as to the meaning of the contract, then what the parties did under it would afford a very strong clue to its purport.

I cite to the Trial Examiner the decisions in the State of California which obtain under the headnote of California jurisprudence that, "When the mean-

ing of the language of a contract is doubtful, the acts of the parties performed under it afford one of the most reliable clues of their intent."

Hill v. MacKay, 94 Cal. 5. Rockwell v. Light, 6 Cal. App. 6563. Whitney v. Aronson, 21 Cal. App. 9.

All of these decisions buttress and support the ruling of the Board itself to the effect that this was a closed shop contract.

Moreover, if there was any question as to whether it was a closed shop contract, the contract provided its own procedure for the solution of that problem. If there was any doubt as to whether these employees should have been let go, there was a manner of bringing that grievance before an adjustment board. The procedure was undertaken. It was referred to the United States Conciliation Service. The Conciliation Service to date has not acted, but nevertheless the Board has held the contract is in effect, and if there is any question as to what the procedure should be, whether they should be discharged or not, then that was a grievance under the contract that surely should have been determined by the procedure of the contract itself. That arbitration procedure has not been exhausted. It is still pending, and certainly the pursuance of it by the employer and the union involved does not constitute any unfair labor practice.

There has been some question raised as to whether 22382 is the same union. No testimony was adduced to that effect. Certainly 22382, through the life of the old contract, continued to exist. There is no statement to the contrary, no showing to the

contrary. Consequently the old contract, as found by the Board, continues, and indeed we have a ruling by the National Labor Relations Board as to the fact that that contract ran between the AFL, California Council of Cannery Unions and its constituent membership. That too was found by the Board in the Bercut-Richards case.

A great deal of evidence was taken on this same question, and the resolution of that evidence and decision of the Board is a matter of record which has been introduced into the record into this case.

So, on all of those grounds we submit that the Regional Office, as far as the first charge, the unfair labor practices under 8(3) to our minds does not abide by the cases, does not abide by the decision of the National Labor Relations Board, and actually is immoral, because it holds the employer to be bound by a union shop contract, and at the same time attempts to exact penalties for the performance of the Board's own rulings.

Turning to the second question: the second question is as to whether this contract, made on March 25, 1946, is valid. The claim is made that that contract falls under 8(1), and cannot stand. The consummation of the contract is alleged to be an unfair labor practice and discriminatory.

Again I believe the Board has answered that question. If it was discriminatory for the employer to give a contract to the union with which he had always dealt, if there is some discrimination in the performance of that contract, there was the same discrimination under that contract prior to March 1st.



The Board already has ruled that that contract was a valid contract, and that the employer should perform it. Therefore, if there was anything discriminatory in the employer's performance of the contract or recognition of it, the Board has sanctioned such discrimination, because the Board has said that the contract was a valid contract, and there was no violation of the Act in its performance. Indeed, I am perfectly frank to admit that the AFL took the position that the election should not be held during the course of the contract. We think that is a very bad practice. We have said so many times to the National Labor Relations Board at Washington, in appearances before the Board.

However, the Board proceeded, despite our protests, to hold the election. At the same time it held the contract was valid. So, it holds that nothing discriminatory occurred by the coincidence of the question of representation, and an election and the granting of and performance of a collective bargaining contract simultaneously therewith.

How has the situation changed because a Board election was held? How does the contract which formerly was valid, according to the Board's own decision, now become invalid because a Board election took place? Indeed, if the Regional Office's position is correct here, the Board's decision is wrong. I should say, rather than the Board's decision, the opinion contained in the decision, because in the course of the opinion the Board says that it is proper for the employers "to recognize each one," that is, each of the unions, "as the representative of its members."



The Board therefore says it is not discriminatory for the employer to recognize one of the unions as the representative of its members, and in that event in no way violates the National Labor Relations Act. If that is the case, where was there a violation of the Act on the part of this employer, when he recognized this union as the representative of his employees, even under the opinion of the Board, when this employer knew that the AFL had been the representative of its employees in the past, and still continued to be the representative of its employees. It knew that it was the representative of its particular plant, because, as the exhibits will show, in the past the practice had been that the individual plants signed a separate contract covering the particular plant, stating and certifying that a majority of its employees were members of the union involved. Here the AFL exhibits show for three successive contracts there is a certification by management and by the union that the majority of the employees in that particular unit belonged to the AFL. So, the argument made by Mr. Jennings that there was not an appropriate unit does not hold.

In the past there has always been a contract entered into for this particular unit, and this particular unit again was covered by the contract made after March 1, 1946.

The final argument, that the union is no longer in existence, has not been borne out by the evidence. Over and again we have testimony in the record

that 22382 continues to exist. There is no showing that it does not continue to exist. The workers belong to 22382. The management dealt with 22382. The constitution and by-laws of 22382 are in evidence, and, while it is true that there are Teamster unions, that is, Teamster cannery unions, that by no means shows that there could not be 22382, a cannery union, which exists at the same time as the Teamsters union. [393]

I find nothing difficult in the fact that there is more than one union in the field. It would certainly be strange if that were something novel.

So, we submit on the second point, that the contract is valid because it is in accordance even with the opinion of the Board, that the Board has already ruled that it is not discriminatory for the employer to give a contract; there is nothing to show that it was discriminatory. The cases hold—and I will cite these in our brief, so I will not take the time of the Trial Examiner now—but, there are quite a few cases, Mr. Trial Examiner, as you know, which hold that once a bargaining agency is established, the employer is bound to deal with that bargaining agency unless and until a new agency is certified in its place. No certification has occurred here. This agency is still the bargaining agent for the employees, and until such time as an election is validly held, it is the organization that continues to represent these employees.

Thank you.

Trial Examiner Myers: Mr. Edises?

Argument on Behalf of the Charging Union Food,  
Tobacco, Agricultural and Allied Workers of  
America, CIO

Mr. Edises: Taking up the last point made by Mr. Tobriner first, the Board has in certain cases stated that there is a presumption that the bargaining agency continues. The Examiner is probably aware that that contention was made in cases involving a refusal by an employer to bargain collectively with a union, that refusal resulting in a loss of the union's majority.

Trial Examiner Myers: Do not go into that line of argument. That is Botany Worsted, Medo Photo and Century-Oxford.

Mr. Edises: Botany Worsted, and so on.

So that I shall not waste the Examiner's time by further trying to answer that one.

Trial Examiner Myers: I do not say that Mr. Tobriner's contention is proper, but I mean the line that you are going into has nothing to do with the case.

Mr. Edises: I am not going to go into it any further for that very reason.

In connection with the law applicable to the situation here, I think that it might be well to remind ourselves that in effect the Board has already established the law of this case, and that is in its Supplemental Decision. It strikes me as a little bit funny to go into any elaborate discussion of other Board cases on different factual situations, when we have a situation here where a party to that

very proceeding has done the very thing which the Board has said, if done, would be a violation of the Act. [395]

On this argument about the union being the same organization and maintaining its representation, and so on, until a new agency has been determined, that argument rests on considerations of contract which have only very limited application in National Labor Relations Board proceedings. Here every contract has written into it the National Labor Relations Act, and the construction of that Act made by the agency which Congress empowered to interpret the Act. The Board has the power to determine itself during what time a bargaining agency shall continue, and it has held normally that it will permit it to continue for a reasonable time. In determining what is a reasonable time, the Board often has been guided by the terms set forth in the contract.

Here there was a contract. It ran until March 1, 1946. The Board decided that was a reasonable time, during which it would permit the agency to continue, but to say that the contract determines the law rather than the law determining the contract is ridiculous. The Board could have cut that contract off right then if it had wanted to, or it could have permitted any other reasonable time for the agency to continue.

It is inaccurate, however, to conclude, from the fact that the Board permitted the bargaining agency to remain in effect until March 1, 1946, that the

Board also sanctioned discrimination during that period. That is a distorted view of what the Board did. As a matter of fact, we do not have to rely on my statement. All we have to do is look at the Board's decision itself. It stated that, although the contract might continue until March 1, 1946, under the existing law, citing the Rutland Court case, any discharges resulting from activity in the election would not be justified, even under the present agreement. Of course, that is the utmost that they could possibly claim here, namely, that there were these discharges under an alleged closed shop agreement.

Of course, as Mr. Jennings points out, the evidence conclusively shows that there was no such agreement.

That is all.

Trial Examiner Myers: Anybody else?

Mr. Jennings: Just four things dealing with the discharges, the 8(3)s.

This contract, alleged to be a defense, covered one unit, the C. P. & G. unit. It has to be a closed shop contract in the entire unit, or it cannot be a closed shop at all. Mr. Agee seems to contend that the contract could be closed shop in one area and not in another. It must either be a closed shop or it is not a closed shop. It is clearly not a closed shop.

Secondly, duress is not a defense, and I will cite the *NLRB v. Star Publishing Company*, 97 Fed. 2d 465, Ninth Circuit.

Trial Examiner Myers: Why neglect my case, the National Board case?

Mr. Jennings: That was in another circuit.

Trial Examiner Myers: Second Circuit.

Mr. Jennings: The validity of the contract was not and could not be litigated in the representation case. The Board, for the purposes of deciding that case and directing an election, assumed the validity of the contract. That is what the decision precisely provides, and that is all it shows.

In the Supplemental Decision, the language referred to by Mr. Tobriner appears. The Board speaks of a closed shop contract. This was a preferential shop contract, often referred to in parlance as "closed shop" merely because it had some form of union preference. The evidence in this case—and this is the only case in which the question of whether or not it is a closed shop was or could be litigated—the evidence in this case shows clearly it was not a closed shop.

With respect to the arbitration section, 10(a) of the Act, which has heretofore been quoted by Mr. Edises, it makes it clear that this Board has the sole and exclusive jurisdiction to determine the matters that are at issue here, and cannot be arbitrated.

Mr. Tobriner: Could I be heard for one minute, Mr. Trial Examiner?

Trial Examiner Myers: Do not rush. Just take your time.



Mr. Tobriner: As to the contention of Mr. Jennings, do I understand—or I presume I misunderstood—that Mr. Jennings now takes the position that the National Labor Relations Board, in its characterization of this contract, was wrong? Is that correct?

Mr. Jennings: I make no such contention, Mr. Examiner. I say that when the Board used the language “closed shop,” it obviously was not deciding anything, because there was nothing before it for decision. It used that language to refer to the contract in a shorthand way, because it does have a union preference clause in it. Such contracts are often referred to as “closed shop,” although they are not accurately so characterized.

Mr. Tobriner: Then, Mr. Trial Examiner, I am interested now to find Mr. Jennings saying that since the Board did not have the subject matter before it as to the contract, its language is not to be considered seriously. That is opposition. There was not before this Board any question as to what the rights of the parties would be in the event that the election were voided. There was no argument as to the status of the parties thereafter.

It has been our position consistently, in accordance with what Mr. Jennings just said, that when a matter not considered by the Board does not come before it, that any language the Board does not make the law of the case. [399]

We therefore submit that the language of the Board as to the future status of the parties is not



binding upon us, and it was not intended to be, and that the practice of the parties as well as the showing of the contract itself will prove that there was a closed shop or union shop contract. The terms are used interchangeably very often.

Trial Examiner Myers: Does anyone wish to add anything to what they have said?

Mr. Agee: I would like the record to show, Mr. Examiner, that Mr. St. Sure was not able to be here today, and I would like the opportunity, if we may be allowed, to present a brief.

Trial Examiner Myers: Certainly. I announced that at the beginning of the hearing.

All parties have until the 16th to file their briefs.

Mr. Tobriner: For the purpose of the record, we will not be able to do it by that time because of intervening matters. We will ask the Chief Trial Examiner to defer the time.

Trial Examiner Myers: You may do so.

Mr. Tobriner: Thank you.

Trial Examiner Myers: It has been called to my attention that Board's Exhibit No. 10 has not been received in evidence. If there is no objection, it will be received, and I will ask the reporter to mark it as Board's Exhibit No. 10.

(The document heretofore marked Board's Exhibit No. 10 for identification was received in evidence.)

## BOARD'S EXHIBIT No. 10

Authorization for deduction of Union initiation fees and Union dues.

I, \_\_\_\_\_, a member of Cannery Workers Union of San Joaquin County Local No. 20676, A. F. of L., and an employee of \_\_\_\_\_, do hereby individually and voluntarily certify that I authorize, by this writing, the above named Company to deduct from my wages, and turn over to the Treasurer of Cannery Workers Union of San Joaquin County Local No, 20676, A. F. of L., any and all union initiation fees and dues certified by said Union to said employer now or hereafter to be due from or payable by me to said Union. This authorization is signed by me under the provisions of Section 3(c) of the collective bargaining agreement between California Processors and Growers, Inc., and the American Federation of Labor and California State Council of Cannery Unions, and shall continue in force until or unless it is revoked individually and voluntarily by me, in writing.

Dated: 194.....

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

Trial Examiner Myers: I want to poll the lawyers again to see whether they have any other witnesses they wish to call, or any other evidence to introduce.

Mr. Jennings?

Mr. Jennings: No, sir.

Trial Examiner Myers: Mr. Agee?

Mr. Agee: No, sir.

Trial Examiner Myers: Mr. Tobriner?

Mr. Tobriner: No, sir.

Trial Examiner Myers: Mr. Edises?

Mr. Edises: No, sir.

Trial Examiner Myers: Is there anything else you gentlemen want to take up with me before I declare the hearing closed?

(No response.)

Trial Examiner Myers: Hearing no request, I declare the hearing closed.

(Whereupon, at 4:55 o'clock p.m., Thursday, April 11, 1946, the hearing in the above-entitled matter was closed.)

## BOARD'S EXHIBIT No. 2

United States of America

Before the National Labor Relations Board

Cases Nos. 20-R-1414-1416, incl.: 20-R-1421-1452, incl.; 20-R-1455-1462, incl.; 20-R-1464-1465, incl.; 20-R-1473-1474, incl.; 20-R-1483; 20-R-1489; 20-R-1493-1523, incl.; 20-R-1530-1532, incl.

In the Matter of

BERCUT RICHARDS PACKING COMPANY,  
et al.,

and

CANNERY AND FOOD PROCESS WORKERS  
COUNCIL OF THE PACIFIC COAST AND  
ITS AFFILIATED UNIONS; FOOD, TO-  
BACCO, AGRICULTURAL AND ALLIED  
WORKERS UNION OF AMERICA, C.I.O.

Mr. Wallace E. Royster, for the Board.

Mr. J. Paul St. Sure, of Oakland, Calif., for the CP&G and certain of the Independent Companies.

Gladstein, Grossman, Sawyer & Edises, by Mr. Aubrey Grossman, of San Francisco, Calif., for the C.I.O.

Mr. Kneland C. Tanner, of Portland, Ore., for the Independent Council and affiliated locals.

Lazarus & Tobriner, by Mr. Mathew O. Tobriner,

of San Francisco, Calif., and Mr. J. A. Padway, of Washington, D.C., for the A.F.L. and affiliated locals.

Mr. A. Sumner Lawrence, of counsel to the Board.

## DECISION, DIRECTION OF ELECTIONS AND ORDER

### Statement of the Case

Upon separate petitions duly filed by various constituent unions of Cannery and Food Process Workers Council of the Pacific Coast, herein called the Independent Council, and by Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., herein called the C.I.O., alleging that questions affecting commerce had arisen concerning the representation of employees of certain of the members of California Processors and Growers, Inc., Oakland, California, herein called CP&G, being the employers listed as members thereof in Appendix A<sup>1</sup> herein, jointly called the Members, and alleging that questions affecting commerce had arisen con-

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<sup>1</sup>Not listed on Appendix A are certain members with respect to whom no specific petitions for investigation and certification of representatives have been filed, but who otherwise appear from evidence introduced at the hearing to be engaged in commerce within the meaning of the National Labor Relations Act. Also not listed on Appendix A are the Companies referred to in the following proceedings as to which requests have been received for the withdrawal of the petitions therein: 20-R-1493, 1494, 1498, 1499, 1500, 1501, 1502, 1504, 1507, 1513, 1514, 1515, 1516, 1518, 1519, 1521, 1530, 1531. The requests for withdrawal of the petitions in the cases enumerated above are hereby granted.

cerning the representation of employees of each of the Companies listed as non-members in Appendix A, herein jointly called the Independent Companies, all of California, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before John Paul Jennings, Trial Examiner. The hearing was held at San Francisco, California, at various times between July 3 and September 11, 1945. The CP&G,<sup>2</sup> the Independent Companies, the Independent Council and constituent unions, the C.I.O., and the California State Council of Cannery Workers and constituent unions, herein called the A.F.L., appeared and participated. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The motion of the A.F.L. that the record be reopened for further testimony and the motions of the A.F.L. and the CP&G that the proceedings as a whole be dismissed are hereby severally denied. All parties were afforded an opportunity to file briefs with the Board.<sup>3</sup>

Upon the entire record in the case, the Board makes the following:<sup>4</sup>

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<sup>2</sup>Counsel for the CP&G also appeared in behalf of the Members.

<sup>3</sup>On September 12, 1945, the Board denied the A.F.L.'s request for leave to present oral argument.

<sup>4</sup>On October 5, 1945, the Board issued a telegraphic decision in these proceedings, subject to confirmation by a written opinion consonant with the determinations and findings contained therein.

## Findings of Fact

I. The Business of the Members and  
the Independents

The record reveals that all the companies involved herein, both Members and Independent Companies, are engaged in one or more phases of the canning or preserving industry in the State of California. Each Member and Independent Company among whose employees an election is hereinafter directed, ships a substantial amount of its products to points outside the State of California.<sup>5</sup>

Each of the Members and each of the Independent Companies among whose employees an election is hereinafter directed admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. The Organizations Involved.

Cannery and Food Process Workers Council of the Pacific Coast and its affiliated unions, independent, are labor organizations admitting to membership employees of the Members and of the Independent Companies.

California State Council of Cannery Unions and its constituent unions, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Members and of the Independent Companies.

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<sup>5</sup>See Appendix A.



Food, Tobacco, Agricultural and Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Members and of the Independent Companies.

### III. The Question Concerning Representation.

Neither the Members nor the Independent Companies will recognize any of the petitioning labor organizations as the collective bargaining representative of any of the employees involved herein in the absence of a certification by the Board.

The A.F.L. and the CP&G contend that an existing collective bargaining agreement, as recently extended to March 1, 1946, constitutes a bar to these proceedings. The C.I.O. disputes the validity of the extended agreement. Upon the facts in the present record, we shall assume the validity of the extended agreement hereinabove referred to. On the other hand, since it appears that the agreement will expire within a comparatively short period of time and that during the greater part of such period there will not be a representative number of employees working in the canning industry,<sup>6</sup> we find that the agreement is not a bar to a present determination of representatives. However, any certification of representatives which may issue as a result of the elections hereinafter directed shall

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<sup>6</sup>After October of the present year, at which time the tomato season will have terminated, until early summer of 1946, the various companies involved herein maintain only a skeleton maintenance force.

be solely for the purpose of designating a bargaining representative to negotiate a new agreement to become effective upon the expiration of the existing contract.<sup>7</sup>

In addition to the issues hereinabove referred to with respect to proceedings affecting members of the CP&G, the record discloses similar issues in proceedings relating to certain non-members of the CP&G hereinabove referred to as the Independent Companies.

Pacific Grape Products Company (20-R-1489.)

With respect to the above Company's present contractual relations as offering a bar to the present proceeding, it appears that, aside from a stipulation which binds the Company to incorporate in an agreement with a federal local of the A.F.L. any directive that might be issued by the National War Labor Board in a case pending in 1943 between the A.F.L. and the CP&G, the Company adopted on January 24, 1942, as its contract with the federal local concerned, the master contract between the A.F.L. and the CP&G. The master contract, as amended in 1943, continued until March 1, 1945, subject to automatic renewal in the absence of timely notice of termination or modification by either party, and also subject to cancellation by either party after March 1, 1945, if reopened in accordance with the notice provision aforesaid. So

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<sup>7</sup>See Matter of Joseph Dyson & Son, Inc., 60 N.L.R.B. 867; Matter of Peerless Stages, Inc., 62 N.L.R.B. 1518.

far as this contract between the Company and the federal local is concerned it is undisputed that timely notice was given by the A.F.L. in accordance with the terms of the automatic renewal provision. Unlike the CP&G, the Company has not expressly extended its agreement with the federal local party thereto. Inasmuch as under the terms of the automatic renewal provision thereof, the contract has not been automatically extended but has become, since March 1, 1945, a contract of indefinite duration subject to termination at the will of either party, we find that it constitutes no bar to a present determination of representatives. The stipulation also constitutes no bar, inasmuch as it is merely an agreement to enter into a contract.<sup>8</sup>

Basic Vegetable Products Company (20-R-1443.)

This Company contends that its existing contract with Federal Local Union 22382 is a bar to the proceeding under consideration. The contract was executed on February 14, 1945, with an expiration date of May 15, 1945, subject to automatic renewal in the absence of 15 days' notice of modification prior to the expiration date and also subject to cancellation by either party after May 15, 1945, under the notice provision which is substantially the same as that in the CP&G contract hereinabove referred to. The Company admits receiving prior to May 1, 1945, a communication from the repre-

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<sup>8</sup>Cf. Matter of Kimberly-Clark Corporation, 55 N.L.R.B. 521; Matter of Corn Products Refining Company, 52 N.L.R.B. 1324.

sentative of the Federal Local requesting negotiations under the automatic renewal provision. The Company contends, however, that no negotiations have taken place and that by reason thereof the contract was automatically renewed. We are of the opinion that the notice was sufficient to prevent automatic renewal of the contract and inasmuch as by its terms it is now terminable at will, we find that the contract is not a bar to a present determination of representatives.

A statement by the Trial Examiner, together with other evidence introduced at the hearing, indicates that the C.I.O. represents a substantial number of employees in the CP&G unit hereinafter found appropriate.<sup>9</sup> It further appears from evi-

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<sup>9</sup>The record indicates that as of the date of the hearing the C.I.O. had 10,128 designations from among a total of 32,287 employees of members of the CP&G. We find contrary to the contention of the A.F.L., that the C.I.O.'s showing of interest is sufficient to warrant the direction of an election in such unit. Moreover, even were this showing diminished by assuming as the basis of the CP&G unit the number of employees among members of the CP&G during peak or near peak operations, we are of the opinion that the C.I.O.'s showing would be sufficient since the last formal agreement between the A.F.L. and the CP&G contains a provision requiring new employees to make application for membership in the local A.F.L. union as a condition of their becoming employees of the CP&G member concerned. See *Matter of Aluminum Company of America*, 61 N.L.R.B. 245; *Matter of Empire Worsted Mills, Inc.*, 63 N.L.R.B., No. 220. The A.F.L. relied upon its contracts as evidence of its interest in the proceedings.

dence in the record that the Independent Council and its constituent unions represent a substantial number of employees of the Independent Companies in the several units hereinafter found appropriate.<sup>10</sup>

We find that questions affecting commerce have arisen concerning the representation of employees of the Members and the Independent Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. The Appropriate Unit.

The C.I.O. and the CP&G are agreed that all production and maintenance employees of members of the CP&G as covered by the master agreement between the A.F.L. and the CP&G constitute an appropriate unit.<sup>11</sup> The A.F.L., while agreeing to the suggestion of a multiple employer unit, contends that any multiple employer unit should embrace the

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<sup>10</sup>Although it appears that the C.I.O.'s showing of representation in units of employees of the Independent Companies is not substantial, we shall accord the C.I.O. a place on the ballot with respect to all elections in units other than in Case No. 20-R-1451 in which the C.I.O. made no showing of representation, since elections are otherwise to be directed in such units wherever there are adequate showings of interest on the part of the petitioners therein. However, in the cases listed in Appendix C wherein no substantial showing of interest has been made by any party to the proceedings, the petitions will be hereinafter dismissed.

<sup>11</sup>All parties are agreed that any unit which might be established by the Board should include the classifications covered by the master contract between the A.F.L. and CP&G.

employees of both CP&G members and also those of the Independent Companies who have customarily followed the lead of the CP&G and have executed agreements substantially identical with those of the CP&G. The Independent Council and its constituent unions contend that all units for any of the employees herein concerned should be upon a plant-by-plant basis as opposed to a multiple-employer unit.

The record discloses that for a period of approximately 8 years, representatives of the Members have met together as a group with representatives of their employees and upon conclusion of the negotiations a single contract has been executed by the CP&G and the A.F.L. By this practice of the employers' customary adherence to the uniform labor agreements resulting from such negotiations, the employers have demonstrated their desire to be bound by group rather than by individual action. Under these circumstances, we find that a unit comprised of the Members is proper for collective bargaining purposes.<sup>12</sup>

On the other hand, we are not persuaded that the history of collective bargaining compels a finding that the employees of the Independents should be part of the multiple-employer unit. There is no evidence that the Independents participated in the

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<sup>12</sup>See *Matter of Rayonier, Incorporated*, Grays Harbor Division, 52 N.L.R.B. 1269 at 1274, 1275; *Matter of Dolese & Shepherd Company*, 56 N.L.R.B. 532; *Matter of Rubin E. Rappeport, et al.*, 62 N.L.R.B. 1118.



negotiations between the CP&G acting on behalf of the Members and the A.F.L. Without any semblance of bargaining, the Independents signed agreements identical to those executed by the Members. We conclude, therefore, that the employees of each of the Independent Companies referred to in Appendix A, excluding those with respect to whom petitions have been withdrawn<sup>13</sup> comprise a separate appropriate unit.<sup>14</sup>

We find that all production and maintenance employees of member Companies of the CP&G,<sup>15</sup> excluding office and clerical employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We further find that all production and maintenance employees of each of the Independents referred to in Appendix A and with respect to whom petitions are not hereinafter dismissed, excluding office and clerical employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in

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<sup>13</sup>See footnote 1.

<sup>14</sup>See *Matter of Advance Tanning Company*, 60 N.L.R.B. 923.

<sup>15</sup>It is hereby intended to include all member companies of CP&G and not only those listed in Appendix A.



the status of employees or effectively recommend such action, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. The determination of Representatives.

The A.F.L. contends that it is not possible to hold representative elections for canning employees during the tomato season now in progress. The record discloses that the number of employees among members of CP&G varies according to seasonal activities from a peak of in excess of 50,000 employees in mid-summer to a minimum of 4 or 5 thousand employees during the off-season beginning in November and ending in March of the following year. While it appears that the tomato season as compared with other fruit seasons does not require as many employees as do the peach and apricot seasons of mid-summer, employment during the tomato season, which usually averages about 20,000 employees, is considerably heavier than that in either of the other two remaining seasons, namely the spinach and asparagus seasons which extend from April 10 to June 30 of the normal canning year. Moreover, it is undisputed that during the tomato season substantially fewer casual and part-time employees and proportionately more full-time regular employees are employed than during the peak seasons. It further appears that if an election is not held now, no representative number of employees will be working until the summer of 1946. Under the circumstances, we are of the opinion

that a sufficiently representative group of employees are now employed and that the interests of the employees will be best served by the direction of elections immediately.

The constituent unions of the Independent Council requests a place on the ballot in the CP&G unit under the name of the Independent Council. Although the showing of the constituent unions of the Independent Council in this unit is not substantial, we shall accord them a place on the ballot under the name of the Independent Council as requested, inasmuch as an election is otherwise to be directed upon an adequate showing of representation.

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the payroll period immediately preceding October 5, 1945, subject to the limitations and additions set forth in the Direction.<sup>16</sup>

### Direction of Elections

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National

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<sup>16</sup>The C.I.O. requested, and the A.F.L. agreed, that employees who have worked less than 25 days not be permitted to participate in the elections; the other parties expressed no opposition to such request. Accordingly, we find that such employees are ineligible to vote.

Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

directed that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with California Processors and Growers, Inc., Oakland, California, as representative of its member companies, and for the purposes of collective bargaining with the Independents in the proceedings referred to in Appendix B, separate elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the units found appropriate in Section IV, above, who were employed during the payroll period immediately preceding October 5, 1945, to determine whether they desire to be represented by the organizations indicated in Appendix B<sup>17</sup> as appearing on the ballots for their respective unit for the purposes of collective bargaining, or by none of these organizations.

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<sup>17</sup>Subsequent to the issuance of the telegraphic decision by the Board, the C.I.O. requested that the names of the Sacramento, Stockton, and Modesto Independent Locals and the Independent Council be removed from the ballot and that in the event that such request for removal be denied, that the Sacramento and Modesto Locals be permitted to appear on the ballot as affiliates of the C.I.O. These requests are hereby denied.

## ORDER

It Is Hereby Ordered that the petitions referred to in Appendix C be, and they hereby are, dismissed.

Signed at Washington, D. C., this 12th day of October, 1945.

PAUL M. HERZOG,  
Chairman.

JOHN M. HOUSTON,  
Member,

[Seal]

National Labor Relations  
Board.

# APPENDIX A

## Members of the California Processors & Growers, Inc.

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1414	Bereut Richards Packing Company	Sacramento, Calif.	\$ 9,000,000	85	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast.
1415	California Packing Corporation #12	Sacramento, Calif.	6,000,000	90	do.
1416	Libby, McNeil & Libby Company	Sacramento, Calif.	10,000,000	70	do.
1421	California Packing Corporation	Yuba City, Calif.	1,500,000	90	Cannery, Dried Fruit and Nut Workers Union of Oroville Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast.
1422	Harter Packing Company	Yuba City, Calif.	1,500,000	90	do.
1423	Santa Cruz Fruit Packing Company	Oroville, Calif.	5,800,000	70	do.
1424	Libby, McNeil & Libby Company	Gridley, Calif.	2,800,000	80	do.

## Appendix A—(Continued)

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1425	Libby, McNeill & Libby Company	Selma, Calif.	\$2,500,000	84	Cannery & Food Process Workers' Union of Selma Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1432	Mor-Pak Preserving Corp.	Stockton, Calif.	2,000,000	90	Cannery and Food Process Workers Union, Stockton Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1433	Manteca Canning Co.	Manteca, Calif.	1,200,000	85	do.
1434	Foster and Wood Canning Co.	Lodi, Calif.	5,000,000	95	do.
1435	Richmond Chase Co.	Stockton, Calif.	4,500,000	85	do.
1436	California Packing Corp.	Stockton, Calif.	350,000	90	do.
1437	Stockton Food Products, Inc.	Stockton, Calif.	1,500,000	95	do.
1438	Thornton Canning Co.	Thornton, Calif.	3,500,000	90	do.
1439	Frank M. Wilson Co., Inc.	Stockton, Calif.	4,000,000	80	do.
1440	Escalon Packers, Inc.	Escalon, Calif.	1,000,000	95	do.

# Appendix A—(Continued)

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1441	California Conserving Company	Ryde, Calif.	\$ 200,000	60	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast.
1444	National Packing Company	Isleton, Calif.	1,056,000	75	do.
1445	Heinz Corporation	Isleton, Calif.	500,000	50	do.
1446	Pratt Lowe Canning Company	Ryde, Calif.	700,000	89	do.
1448	Libby, McNeill & Libby Company	Nimbus, Calif.	335,000	50	do.
1449	California Packing Corporation #11	Sacramento, Calif.	5,500,000	90	do.
1452	Lincoln Packing Company	Lincoln, Calif.	1,500,000	90	do.



## Appendix A—(Continued)

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1456	Riverbank Canning Company	Riverbank, Calif.	\$3,000,000	90	Cannery and Food Process Workers Union of Modesto Area, affiliated with the Cannery & Food Process Workers Council of the Pacific Coast.
1460	Turlock Cooperative Growers	Modesto, Calif.	3,500,000	95	do.
1461	Tri-Valley Packing Association	Modesto, Calif.	3,113,580	85	do.
1462	G. W. Hume Company	Turlock, Calif.	1,953,000	62	do.
1483	California Processors & Growers, Inc.	Oakland, Calif.	See affiliated companies		Food, Tobacco, Agricultural & Allied Workers' Union of America.

## Non-Members of the California Processors &amp; Growers, Inc.

*C. W. Hume Company, et al.*

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Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1427	Aron Canning Company	Stockton, Calif.	\$1,000,000	98	Cannery and Food Process Workers Union, Stockton Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1428	Califruit Canning Co.	Manteca, Calif.	over 100,000	90	do.
1429	Flotill Products, Inc.	Stockton, Calif.	3,000,000	95	do.
1430	Allen R. Parrish Co.	Stockton, Calif.	300,000	65	do.
1431	H. F. Churehill Co.	Stockton, Calif.	1,000 Tons	over 50	do.
1442	Matmor Canning Company	Woodland, Calif.	2,000,000	99	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1443	Basic Vegetable Products Company	Vacaville, Calif.	6,000,000	95	do.
1447	Fair Oaks Fruit Company	Fair Oaks, Calif.	375,000	75	do.
1451	Ensher, Alexander & Barsom, Inc.	Isleton, Calif.	750,000	67	do.

## Appendix A—(Continued)

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1455	Flotill Products, Inc.	Modesto, Calif.	\$5,500,000	95	Cannery and Food Process Workers Union of Modesto Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1457	Sardik Food Products Corporation	Riverbank, Calif.	1,600,000	99	do.
1458	Stanislaus Canning	Modesto, Calif.	1,000,000	95	do.
1459	Pacific Packing Company	Oakdale, Calif.	1,800,000	80	do.
1464	Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation	Atwater, Calif.	1,500,000	36	do.
1465	Kadota Fig Association	Merced, Calif.	over 1,000,000	over 50	do.
1473	California Pet Foods Co.	Sacramento, Calif.	Not known	100	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1474	Sacramento Frosted Food Co.	Sacramento, Calif.	Not known	50	do.

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1489	Pacific Grape Products	Modesto, Calif.	3,700,000	80	Cannery and Food Process Workers Union of Modesto Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1495	Booth Company, Inc.	Centerville, Calif.	over 100,000	over 50	Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O.
1496	Watsonville Canning Company	Watsonville, Calif.	—	—	do.
1497	Walnut Creek Canning Company	Walnut Creek, Calif.	750,000	99	do.
1503	Pearce Canning Company	Decoto, Calif.	over 100,000	over 50	do.
1505	Fred A. Plagg Company	Manteca, Calif.	over 100,000	over 50	do.
1506	L. & L. Packing Company, Inc.	San Jose, Calif.	over 100,000	over 50	do.
1508	Sun Garden Packing Company	San Jose, Calif.	over 100,000	over 50	do.

## Appendix A—(Continued)

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1509	San Jose Canning Company	San Jose, Calif.	over \$100,000	over 50	Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O.
1510	Raiter Canning Company	Salinas, Calif.	over 50,000	60	do.
1511	California Sunset Products Company	Merced, Calif.	over 100,000	over 50	do.
1512	California Frozen Foods	Turlock, Calif.	over 100,000	over 50	do.
1517	Fruitvale Canning Company	Oakland, Calif.	5,000,000	75	do.
1520	Fair View Packing Company	Hollister, Calif.	over 100,000	over 50	do.
1522	Hershel California Fruit Products, Inc.	San Jose, Calif.	over 100,000	over 50	
1523	Hollister Canning Company, Inc.	Hollister, Calif.	over 100,000	over 50	do.
1532	Planads Packers	Planada, Calif.	over 100,000	over 50	do.

## APPENDIX B

Case No. 20-R-	Name	Parties on Ballot
1427	Aron Canning Co.	Cannery and Food Process Workers Union of Stockton Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1428	Califruit Canning Co.	do.
1429	Flotill Products, Inc.	do.
1430	Alen R. Parrish Co.	do.
1443	Basic Vegetable Products Co.	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1447	Fair Oaks Fruit Co.	do.
1451	Ensher Alexander & Barsoom, Inc.	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor.

## APPENDIX B

Case No. 20-R-	Name	Parties on Ballot
1457	Sardik Food Products Corp.	Cannery and Food Process Workers Union of Modesto Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1458	Stanislans Canning Co.	do.
1464	Scientific Nutrition Corp., d/b/a Capolino Packing Corp.	do.
1473	California Pet Foods Co.	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1474	Sacramento Frosted Foods Co.	do.
1483	California Process & Growers, Inc.	Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.



Case No. 20-R-	Name	Parties on Ballot
1489	Pacific Grape Products Co.	Cannery and Food Process Workers Union of Modesto Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of La- bor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1495	Booth Company, Inc.	California State Council of Cannery Unions, American Federation of La- bor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1510	Raiter Canning Company	do.
1517	Fruitvale Canning Co.	do.

## APPENDIX C

Case No.  
20-R-

Company Name

1431	H. F. Churchill Company
1442	Matmor Canning Co.
1455	Flotilla Products, Inc.
1465	Kadota Fig Association
1496	Watsonville Cannery
1497	Walnut Creek Cannery Co.
1503	Pearce Canning Company
1505	Fred A. Plagg Company
1506	L. & L. Packing Company, Inc.
1508	Sun Garden Packing Company
1509	San Jose Canning Company
1511	California Sunset Products Company
1512	California Frozen Foods
1520	Fair View Packing Company
1522	Hershel California Fruit Products, Inc.
1523	Hollister Canning Company, Inc.
1532	Planada Packers

## BOARD'S EXHIBIT No. 3

[Title of Board and Causes.]

## SUPPLEMENTAL DECISION AND ORDER

## Statement of the Case

Pursuant to a telegraphic Decision and Direction of Elections issued on October 5, 1945, and confirmed in a printed Decision issued by the Board on October 12, 1945, elections by secret ballot were conducted under the direction and supervision of the Regional Director for the Twentieth Region (San Francisco, California) among the employees of members of California Processors and Growers, Inc., hereinafter referred to as CP&G, and among the employees of certain Independent Companies, herein jointly referred to as the Independent Companies. The elections were conducted from October 11 to October 18, 1945, inclusive<sup>1</sup> with results, other than those subsequently reported, as set forth in the Tallies of Ballots and in the Regional Director's Report on Challenged Ballots and Report on Lincoln Packing Company ballots, issued on October 22, 1945, and on December 21, 1945, respectively.<sup>2</sup>

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<sup>1</sup>Except for the election at Allen R. Parrish Co., which was held on December 20, 1945.

<sup>2</sup>The election results as reported in the Tally of Ballots and the Report on Challenged Ballots and Report on Lincoln Packing Company ballots are set forth in Appendix A. In view of our opinion concerning the objections, we find it unnecessary to make any disposition of the challenged ballots cast in the several elections.

Between October 29, 1945, and January 5, 1946, the AFL duly filed objections to the conduct of the ballot in the several elections affecting employees of CP&G and of the Independent Companies.<sup>3</sup> On December 7, 1945, the C.I.O. filed an answer to the A.F.L.'s objections. On January 16, 1946, the Regional Director issued a Report on Objections,<sup>4</sup> in which report the Regional Director found that the Objections of the A.F.L. raised no substantial or material issues with respect to the conduct of the elections and recommended that they be overruled. Thereafter, the A.F.L. filed exceptions to the Report on Objections. On January 24, 1946, all parties argued orally before the Board in Washington, D. C., the issues raised by the A.F.L.'s objections.

#### The Issues Raised by the Objections

The A.F.L. filed 21 objections. Some of the objections are highly technical, consistent with the A.F.L.'s unremitting attempts to block or discredit these particular elections. If, however, the Board is to do justice in such a case, it must weigh the merits without regard to the motives or methods of an objecting party.

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<sup>3</sup>The C.I.O. also filed objections with respect to elections at two of the Independent Companies, but has since withdrawn them with the statement that they were "insubstantial."

<sup>4</sup>In addition to reporting on objections, the Regional Director reported on challenged ballots in two inconclusive elections among employees of the Independent Companies.

An analysis indicates that the objections fall into four categories: (1) Charges that Board agents displayed partiality to the C.I.O. and hostility to the A.F.L.; (2) charges that irregularities occurred at the polling places through the failure of Board agents to stop electioneering near the booths, making last minute changes in the hours of voting, and impairing the secrecy of the ballot by letting several persons enter a booth at the same time; (3) charges that the Board failed to provide lists which revealed with any degree of accuracy the eligibility of the voters; and (4) charges that the Direction of Election was erroneously interpreted in two particulars, thereby resulting in the disenfranchisement of many employees, and in the improper use of the ballot by many persons ineligible to vote.

With respect to the first contention, we agree, after reviewing the Regional Director's analysis of the evidence, that his finding that no Board agent displayed any favoritism or prejudice towards any of the rival unions is amply sustained. Although there may have been some temporary confusion at some of the voting places, the record establishes no bias, misconduct or neglect of duty on the part of the Regional Director or any of the Board agents in conducting the elections.<sup>5</sup> It appears that the Director and his assistants performed a difficult

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<sup>5</sup>Indeed, counsel for the A.F.L. stated at the oral argument that he was not asserting any bias, misconduct or other failure of the Regional Director to perform his duty to the best of his ability under the circumstances. Counsel said that the task assigned was an impossible one on such short notice.

task with diligence, but were seriously handicapped by the pressure of time, due to the Board's having ordered the elections at the very end of the season.

The objections falling into the second category were accompanied by several affidavits, most of them executed by A.F.L. observers in the various plants where the elections were held. In investigating the truth of these affidavits, the Regional Director also obtained affidavits from other persons who had been at the polling places and reached the conclusion that these objections were without merit. It was the position of the A.F.L. counsel at the oral argument that since the affiants made allegations which, if true, do point to serious irregularities, the Regional Director should not have held that these questions were so immaterial that a formal hearing was not required. We take the view that where affidavits do raise serious issues, the better practice is to resolve any question of the credibility of the affiant at a hearing rather than on the basis of reports and counter-affidavits.<sup>6</sup> In this case, however, the taking of testimony on these issues would necessarily be extremely protracted, and, even assuming that the evidence led us to overrule the objections, it could not result in a final decision or certification until the 1946 season had been in progress for many months and new employees were working in the canneries. Because of other aspects of the case, we have concluded that a hearing is unnecessary.

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<sup>6</sup>See *Matter of Loose Wiles Biscuit Company*, 60 N.L.R.B. 814.

We are much more seriously concerned with the objections in the third and fourth categories, because the Regional Director's report itself reveals that certain of these contentions have a real basis in fact. Under the Decision and Direction of Election, a person who had worked a total of 25 days at more than one plant in the CP&G unit was entitled to vote. In other words, even though the payroll at the particular plant where the vote was taken might indicate that certain workers had not been employed for the requisite time, such voters nevertheless had right to have the days worked at other plants "tacked on" to their record. Since there were some 61 plants in the association unit, no eligibility list for a single plant would be decisive on the voting rights of an employee who had worked previously for other companies in the association. Nevertheless, no master eligibility list was available for use at the polling places.<sup>7</sup>

Nor were many lists made sufficiently available to all parties well before the balloting began, although that is the invariable custom in Board elections. Thus, no one knew, sufficiently ahead of

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<sup>7</sup>It is apparent from the record that the necessity of conducting the elections immediately, in anticipation of a seasonal decline in canning operations, made it difficult to prepare a master eligibility list for use at the elections in the CP&G unit, and contributed to the inadequacy of those eligibility lists used at the elections among employees of the Independent Companies. No blame can attach to the Regional Director for not taking this conventional precaution, whatever our view of the important effect of its absence upon the merit of the objections.



time, who should be challenged, or the facts upon which a challenge could be based. It therefore appears that, although the right to challenge was exercised in numerous instances by union observers, they had no sure means of determining objectively the eligibility of employees who claimed the right to vote by reason of having worked a total of 25 days at more than one plant in the CP&G unit.

Even more serious is a parallel objection with respect to elections involving 3,500 employees at 10 CP&G plants (enough to affect the result of the entire CP&G election), where admittedly no pay-rolls or other means existed which made it possible to ascertain eligibility under the 25-day requirement. No data was provided as to the number of days worked in these individual plants. In these instances, no extrinsic facts were available to indicate how many days particular voters had worked in the very plant being voted. Thus there was not even a sure figure to which additional days worked elsewhere might have been added or "tacked." We are of the opinion that in the absence of objective means for determining eligibility, the possibility of error in permitting ineligible employees to cast ballots was substantial. It was not precluded by the fact that in many instances the observers of the several labor organizations agreed upon the eligibility of individual employees, sometimes by refraining from challenging them. It is apparent from the record that such observers could not, in fact, have had adequate advance knowledge of the

factors required for determining the eligibility of those employees who claimed to have worked the required number of days.

With respect to errors in the interpretation of the Board's Decision, the A.F.L. maintains that the wording of the Decision created uncertainty as to whether the 25-day eligibility period expired on October 5, 1945, the date of the Board's telegraphic Decision, or whether it extended so as to permit days worked to be computed up to the date of the individual elections,<sup>3</sup> which were held between October 11 and 18. The AFL further contends that the words "temporarily laid off" in the Decision should have been interpreted by the Regional Director to include "seasonal lay-offs" (employees who had worked during earlier peak periods in the 1945 season), as well as employees who were merely temporarily laid off during the week of October 5.

So far as the eligibility provision is concerned, while the issue was not specifically raised at the original hearing,<sup>9</sup> both the language of the Decision

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<sup>8</sup>The latter interpretation was that adopted and applied by the Regional Director to all the elections involved herein. The telegraphic decision declared as eligible those employees "who were employed during the payroll period immediately preceding October 5, 1945, and have worked a total of 25 days during the current season within the unit . . . including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off . . ."

<sup>9</sup>The parties agreed at the hearing to the inclusion of the eligibility provisions substantially in the form adopted by the Board.

and the applicable precedents indicate a limitation of the 25-day test to the period prior to October 5. Our usual practice of designating a payroll date is for the purpose of freezing eligibility immediately upon the publication of the Decision, lest employers be free to determine who may exercise the franchise by offering later employment to particular individuals. On the rare occasions in which we have permitted eligibility for voting purposes to be computed up to the very day of the election, it has not been our practice to insert, as we did here, a specific payroll date in the Decision and Direction of Election. Although the Regional Director acted in good faith in adopting a contrary interpretation, a majority of the Board members construe the Decision otherwise. It follows that under the pre-election ruling an undetermined number of employees who would otherwise have been ineligible to vote were permitted to cast their ballots without challenge.<sup>10</sup>

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<sup>10</sup>To be sure, the Regional Director's Report on Challenges indicates that at some plants a certain number of voters were challenged on this ground. His Report on Objections, however, shows that in many plants his ruling was accepted by all the observers. As his report states on page 8:

Voters who were not shown as having worked 25 days up to the end of the payroll period immediately preceding October 5, 1945, but who showed evidence such as check stubs of a total of at least 25 days' work through the voting date, or in the absence of such evidence as to whose eligibility on this basis all the observers agreed, were voted without challenge.

It is therefore clear that his interpretation caused observers to waive their right to challenge in an indeterminable number of instances.

Another complication developed from the use of the words "temporarily laid off" in the Board's telegraphic Decision. The issue as to whether employees known as "seasonal layoffs"<sup>11</sup> should have been held eligible to vote was likewise not expressly raised by the parties at the original hearings, which were held during the summer. Accordingly, the Board adopted its usual language with respect to temporarily laid off employees, which language was accorded its normal interpretation by the Regional Director, without reference to the fact that this was an industry with fluctuating seasons. He advised the parties that the only persons eligible would be those employed during the then current tomato season, and that only those in that category who happened to be "temporarily laid off" during the week of October 5 might vote. Inasmuch, however, as the appropriate bargaining units necessarily include all persons employed at any time during the entire canning season, and that any certification issued would govern the relations of the employers with employees hired during the entire 1946 season, the franchise should not have been so lightly denied to any such 1945 employees,<sup>11a</sup> provided they had worked the requisite 25 days before October 5. Although there may be no direct evidence that any of the seasonally laid off employees were deprived of the right to cast challenged ballots, it is plain

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<sup>11</sup> and <sup>11a</sup> Employees who worked during the earlier spinach, asparagus, apricot and peach seasons. Almost 40,000 men and women had been employed during the August-September peach season in 1944. About 12,250 voted in this election.

that an indeterminable number of the thousands of employees within the unit must naturally have refrained from taking the seemingly futile step of going to the polls, by reason of the Regional Director's previously announced interpretation.<sup>12</sup> It is this very uncertainty that gives us pause. It raises more than a speculative possibility that the results were not fully representative.

Upon consideration of all the foregoing facts, we are of the opinion that the elections were not, under the circumstances here presented, attended by such procedural safeguards or certainty concerning eligibility as to constitute a proper foundation for a Board certification in an industry which has been the scene of such bitter strife. There is substantial doubt whether the results are truly representative of the desires of the employees who should have been eligible to vote therein.<sup>13</sup> It is of

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<sup>12</sup>Chairman Herzog does not concur in this paragraph to the extent that it implies that the Regional Director interpreted our opinion of October 12 erroneously. The first paragraph of Section V of that opinion, relating to the tomato season, seems to the Chairman to support the Director's interpretation of the opinion as written. It remains true, however, that the original determination by the Board may well have done a substantial and avoidable injustice to a large number of other employees, and that it was probably incorrect when reached. The Chairman believes that there are substantial other reasons, already recited, which warrant the ultimate result herein.

<sup>13</sup>See Matter of Kennecott Copper Corporation, 55 N.L.R.B. 928. See also Matter of Mobile Steamship Company, 11 N.L.R.B. 374.



vital importance to the Board's effectuation of the policies of the Act that the integrity of its procedures be maintained at all times and at all cost, and that the regularity of the conduct of its elections be above reproach. In this view of the matter, it is relatively unimportant that there is no sure proof that one party to the election was prejudiced more than the other.

We therefore are constrained to conclude that the balloting was not conducted in accordance with our usual standards or under conditions tending to create confidence in the result or to lay the foundation for satisfactory bargaining. We are of the opinion, therefore, that the purposes of the Act will best be served by setting aside all of the elections held herein.

While we view the record as requiring this result, we reach it with considerable reluctance because it means that the employees will have no bargaining representative to negotiate an exclusive collective agreement to cover the coming season, until a new election can be held which may result in one of the rival unions being certified. The current AFL contract will expire on March 1, and since the legal effect of the foregoing determination is to keep the question of representation pending before the Board, none of the unions is entitled to an exclusive status as the bargaining agent after that date. In accordance with well-established principles,<sup>14</sup> the employers may not, pending a new election, give

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<sup>14</sup>See *Matter of Midwest Piping & Supply Co., Inc.*, 63 N.L.R.B. 163. See also *Matter of Ken-Rad Tube & Lamp Corp.*, 62 N.L.R.B. 21.

preferential treatment to any of the labor organizations involved, although they may recognize each one as the representative of its members. In this state of the record, no legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date;<sup>15</sup> the inclusion of any such provision in any new agreements, or action pursuant thereto, would clearly be contrary to the proviso in Sub-section 8 (3). Nothing in our decision, however, should be construed as requiring any change in the substantive conditions of employment now existing by virtue of the foregoing agreements.

In order to expedite final disposition of the case, the Board will conduct new elections as soon as eligibility lists can be prepared which meet the objections discussed herein. Upon appropriate motion, the Board will explore the possibility of holding the election at an early date by use of mail ballots as well as by the manual method, provided the feasibility of this procedure, with adequate safeguards, can be demonstrated by the submission of data not incorporated in the present record. As an alternative, the Board will consider holding a new manual election as early in the 1946 season as there is substantial re-employment.

In setting aside these elections, we are aware of the fact that the procedural defect arising from the

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<sup>15</sup>Moreover, no requests for discharges resulting from activity in the election are justified even under the present agreement. See *Matter of Rutland Court Owners*, 44 N.L.R.B. 587, 46 N.L.R.B. 1040.



absence of a master eligibility list is not applicable to the elections held among employees of the Independent Companies. However, the other defects based on uncertainty concerning the meaning of 25-day eligibility rule and the action taken respecting employees "temporarily laid off," are just as applicable to these elections as they are to the elections held among the employees in the CP&G unit. We are of the opinion that by reason of these difficulties, the elections conducted among employees of the Independent Companies raise such a possibility of error that such elections should also be vacated and set aside. As a practical matter, this will be in harmony with our ruling regarding the elections in the CP&G unit and will avoid inconsistent disposition of the problems of the cannery industry.

### ORDER

It Is Hereby Ordered that the elections held from October 11 to December 20, 1945, inclusive, among the employees of members of CP&G and among the employees of the Independent Companies be, and they hereby are, vacated and set aside.

Signed at Washington, D.C., this 15th day of February, 1946.

PAUL M. HERZOG,  
Chairman.

GERARD D. REILLY,  
Member,

[Seal]

National Labor Relations  
Board.

John M. Huston, dissenting:

In the circumstances of these cases, I am of the opinion that the objections to the conduct of the election should be overruled and that the Regional Director's Report on such objections should be sustained. As is always the case when the Board is called upon to conduct a ballot in an industry, seasonal in nature, with geographically widespread operations and employing large groups of transient labor, the difficulties of obtaining a precise result unattended by imperfections are greatly magnified. In the present case my colleagues have pointed to a number of contingencies as the basis for their decision to set these elections aside. Granted that the possibilities alluded to in the majority opinion might have had the effect of producing deviations from normally acceptable consequences, the issue whether they are so serious as to have rendered a representative and fairly conclusive choice impossible must be answered, in my judgment, in the negative.

The Board in these cases was confronted with the necessity of designating a period of eligibility which would conduce to a representative vote. In order to do so the Board was careful to take as a period in which to conduct the ballot, a period in the operations of the industry during which the largest num-

ber of "year-round" employees were employed.<sup>16</sup> Preparations for the elections were consequently speeded and, so far as I am aware, these preparations were carried on in a careful and skillful manner. The elections were conducted also with a view toward the quick settlement of a protracted dispute of particular significance to an industry vital to our national well-being. In the course of the Board's preparation for and conduct of those elections irregularities did occur, as they inevitably must have occurred in such circumstances. It is of extreme importance to note, however, that neither contestant can claim that its chances of success were thereby prejudiced. Both came to the polls with equal advantages and equal handicaps. While I am in whole-

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<sup>16</sup>The suggestion in the decision that the words "temporarily laid off" in our Decision and Direction of Elections were erroneously interpreted is without substance in my judgment. The then current tomato season was the period during which most regular employees worked. Balloting of these employees was considered as likely to produce a highly representative vote. But Regional Director's interpretation of the above language to mean that only employees laid off during that period were to be considered temporarily laid off employees was in accord with that purpose and I am constrained to disagree with the decision on this issue. The fact that a certification, if one issued, would be effective for all employees in the unit during the 1946 season does not support the majority view. Many times our certifications are based upon balloting considered to be most likely to produce a representative selection, although all employees in the unit certified do not participate. This is especially the case in industries which operate upon a seasonal basis.

hearted accord with my colleagues that "it is of vital importance to the Board's effectuation of the policies of the Act that the integrity of its procedures be maintained at all times and at all cost, and that the regularity of the conduct of its elections be above reproach," I do not think that, in the peculiar conditions existing in this industry, we would endanger those policies by refusing to disturb these elections.

In view of the majority decision the challenged ballots will not be opened and counted. I should have ordered them opened and counted, in my view of the case. Because the tally shows a great probability that the C.I.O Union would have secured a conclusive majority, needing approximately 63 votes of a total of 1291 challenged ballots, it would appear that a certification of representatives would have been issued. This doubtless would have clarified the respective rights and obligations of the parties apropos collective bargaining relationships for the coming season.

Signed at Washington, D. C., this 15 day of February 1946.

[Seal]

JOHN M. HOUSTON,

Member, National Labor Relations Board.

## APPENDIX A

## C. P. &amp; G.

Approximate number of eligible voters.....	23,545
Valid votes counted.....	10,968
Votes cast for California State Council of Cannery Unions, A. F. of L.....	4,701
Votes cast for F. T. A.-C. I. O. ....	6,067
Votes cast for Cannery and Food Process Workers Council of the Pacific Coast, Independent.....	110
Votes cast against participating labor organizations..	90
Challenged ballots .....	1,291
Void ballots .....	248

## Allen R. Parrish Company

Approximate number of eligible voters.....	67
Valid votes counted.....	40
Votes cast for California State Council of Cannery Unions, A. F. of L. ....	7
Votes cast for F. T. A.-C. I. O.....	33
Votes cast for Cannery and Food Process Workers Union of Stockton Area, Independent.....	0
Votes cast against participating labor organizations	0
Challenged ballots .....	14
Void ballots .....	0

## Stanislaus Canning Company

Approximate number of eligible voters.....	154
Valid votes counted.....	80
Votes cast for California State Council of Cannery Unions, A. F. of L.....	9
Votes cast for F. T. A.-C. I. O.....	71
Votes cast for Cannery and Food Process Workers Union of Modesto Area, Independent.....	0
Votes cast against participating labor organizations	0
Challenged ballots.....	2
Void ballots.....	4

## Califruit Canning Co.

Approximate number of eligible voters.....	136
Valid votes counted.....	101
Votes cast for California State Council of Cannery Unions, A. F. of L.....	22
Votes cast for F. T. A.-C. I. O.....	77
Votes cast for Cannery and Food Process Workers Union of Stockton Area, Independent.....	1
Votes cast against participating labor organizations	1
Challenged ballots.....	0
Void ballots.....	2

## Scientific Nutrition Corporation, doing business as

## Capolino Packing Corporation

Approximate number of eligible voters.....	107
Valid votes counted.....	57
Votes cast for California State Council of Cannery Unions, A. F. of L.....	35
Votes cast for F. T. A.-C. I. O.....	22
Votes cast for Cannery and Food Process Workers Union of Modesto Area, Independent .....	0
Votes cast against participating labor organizations..	0
Challenged ballots.....	0
Void ballots .....	0

## Aron Canning Co.

Approximate number of eligible voters.....	29
Valid votes counted.....	26
Votes cast for California State Council of Cannery Unions, A. F. of L.....	20
Votes cast for F. T. A.-C. I. O.....	6
Votes cast for Cannery and Food Process Workers Union of Stockton Area, Independent.....	0
Votes cast against participating labor organizations	0
Challenged ballots.....	0
Void ballots.....	0

## Ensher, Alexander &amp; Barsoom, Inc.

Approximate number of eligible voters.....	225
Valid votes counted.....	96
Votes cast for California State Council of Cannery Unions, A. F. of L.....	64
Votes cast for Cannery and Food Process Workers Union of Sacramento Area, Independent.....	28
Votes cast against participating labor organizations..	4
Challenged ballots.....	4
Void ballots .....	3

## Booth Company, Inc

Approximate number of eligible voters.....	296
Valid votes counted.....	176
Votes cast for California State Council of Cannery Unions, A. F. of L.....	123
Votes cast for F.T.A.-C.I.O.....	52
Votes cast against participating labor organizations..	1
Challenged ballots.....	14
Void ballots.....	2



**Raiter Canning Company**

Approximate number of eligible voters.....	96
Valid votes counted.....	49
Votes cast for California State Council of Cannery Unions, A. F. of L.....	30
Votes cast for F. T. A.-C. I. O.....	19
Votes cast against participating labor organizations..	0
Challenged ballots .....	10
Void ballots.....	2

**Sardik Food Products Corporation**

Approximate number of eligible voters.....	40
Valid votes counted.....	31
Votes cast for California State Council of Cannery Unions, A. F. of L.....	10
Votes cast for F. T. A.-C. I. O.....	21
Votes cast for Cannery and Food Process Workers Union of Modesto Area, Independent.....	0
Votes cast against participating labor organizations..	0
Challenged ballots.....	1
Void ballots.....	1

**Fruitvale Canning Company**

Approximate number of eligible voters.....	591
Valid votes counted .....	234
Votes cast for California State Council of Cannery Unions, A. F. of L.....	56
Votes cast for F. T. A.-C. I. O.....	178
Votes cast against participating labor organizations..	0
Challenged ballots.....	21
Void ballots.....	1

**Basic Vegetable Products Company**

Approximate number of eligible voters.....	494
Valid votes counted.....	285
Votes cast for California State Council of Cannery Unions, A. F. of L.....	115
Votes cast for F. T. A.-C. I. O.....	169
Votes cast for Cannery and Food Process Workers Union of Sacramento Area, Independent.....	0
Votes cast against participating labor organizations..	1
Challenged ballots.....	47
Void ballots.....	5



## Pacific Grape Products, Inc.

Approximate number of eligible voters.....	333
Valid votes counted .....	201
Votes cast for California State Council of Cannery Unions, A. F. of L.....	4
Votes cast for F. T. A.-C. I. O.....	193
Votes cast for Cannery and Food Process Workers Union of Modesto Area, Independent.....	4
Votes cast against participating labor organizations..	0
Challenged ballots.....	1
Void ballots.....	0

## Flotill Prodets, Inc.

Approximate number of eligible voters.....	305
Valid votes counted.....	205
Votes cast for California State Council of Cannery Unions, A. F. of L.....	105
Votes cast for F. T. A.-C. I. O.....	100
Votes cast for Cannery and Food Process Workers Union of Stockton Area, Independent.....	0
Votes cast against participating labor organizations	0
Challenged ballots.....	20
Void ballots.....	7

## Sacramento Frosted Foods Co.

Approximate number of eligible voters.....	85
Valid votes counted.....	62
Votes cast for California State Council of Cannery Unions, A. F. of L.....	28
Votes cast for F. T. A.-C. I. O.....	34
Votes cast for Cannery and Food Process Workers Union of Sacramento Area, Independent.....	0
Votes cast against participating labor organizations..	0
Challenged ballots.....	11
Void ballots.....	1

## Lincoln Packing Company

Approximate number of eligible voters.....	150
Valid votes counted <sup>17</sup> .....	77

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<sup>17</sup>The ballots in this election in which there were apparently no challenged ballots, have not been counted but have been impounded, pending a determination of the question as to whether the employees of Lincoln Packing Company should be included in the C. P. & G unit or should constitute a separate appropriate unit.

BOARD'S EXHIBIT No 4

Collective Bargaining Agreement Between California Processors and Growers, Inc., and The American Federation of Labor and California State Council of Cannery Unions as Adopted June 10, 1941, Amended January 26, 1942, Amended July 10, 1943.

Agreement

This Agreement made and entered into this 10th day of June, 1941, (as amended January 26, 1942 and July 10, 1943) by and between California Processors and Growers, Inc., as collective bargaining agent for and on behalf of those canning companies, each of which is hereinafter called the Employer, and which by written statement attached to this agreement or specifically referring to this agreement, adopt this agreement and promise to be bound thereby, and the American Federation of Labor and California State Council of Cannery Unions, as collective bargaining agents for and on behalf of those Cannery Workers Unions, chartered by the American Federation of Labor, each of which is hereinafter called the Union, and which by written statement attached to this agreement or specifically referring to this agreement, adopt this agreement and promise to be bound thereby.

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

Each and every, all and singular of the obligations and provisions of said collective bargaining

## Board's Exhibit No. 4—(Continued)

agreement dated June 10, 1941, as amended January 26, 1942, are hereby ratified and confirmed, without variation or modification of any kind or character, except as specified in the amendments hereinafter set forth and in the "Supplementary Emergency Agreement" of even date herewith.

Section 1. Recognition. The Employer through its representative, California Processors and Growers, Inc., hereby agrees to recognize the Union through its representatives, California State Council of Cannery Unions and the American Federation of Labor, as the sole agency representing its employees for the purpose of collective bargaining. There shall be no discrimination of any kind against any employees on account of union affiliation or on account of bona fide union activity of such persons.

Section 2. Operation of Agreement. In addition to the operation of this master contract as an agreement between the collective bargaining agents of the Employers and the Unions above described, this contract shall operate as a direct agreement between individual Employers and individual local Unions as to named canning plants and named local Unions, upon the execution of the attached forms of certificate setting forth the name of the Employer, the location of the plant, and the name and charter number of the Union concerned. The execution of such certificates shall bind the individual Employers and individual Unions mutually concerned, for the plants and for the membership of

## Board's Exhibit No. 4—(Continued)

the local Unions so named, as follows: The Employer will pay the wages herein specified and perform the agreements on its part as hereinafter set forth, and the Union, through its membership, will do the work herein described and perform the agreements on its part as hereinafter set forth, each without limitation or reservation except as expressed hereinafter.

Section 3. Preference of Employment and Hiring Practices.

(a) It is recognized that the refusal of Union members to work with non-union employees who are within the jurisdiction of the local Union shall not constitute a violation of this agreement, provided, however, that before any strike action, job action or other direct action is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof. In order to aid in the prompt adjustment of such matters, the Union shall furnish its members with a clearance card, dues book or other evidence of paid-up membership, and when employees who are on the seniority lists, as defined in Section 9 hereof, are called to work, the Employer will request that such evidence be presented by those who have it, and will keep a record, which will be available to the Union, of all employees do not present such evidence. Similarly the Union will from time to time, when such information is available, notify the Employer of the names of delinquent or suspended members, or other non-union employees, according to Union records.

The Employer shall be the sole judge of the quali-

## Board's Exhibit No. 4—(Continued)

fications of all of its employees, subject to appeal as provided in Section 8 hereof, but in the selection of new employees the Employer will give preference of employment to unemployed members of the local union, provided they have the necessary qualifications and are available when new employees are to be hired. "New Employees", for the purpose of this agreement, are defined to be persons who are not on the seniority list of the hiring plant, as defined in Section 9 hereof, even though they may have been employed previously by said plant. As a basis for preferential consideration as new employees as aforesaid, unemployed members of the local union shall be required to present a clearance card from the local union evidencing the fact of their paid-up membership. [If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union before being put to work. Upon filing such application he shall receive from the Union a written statement that he has made such application, which statement shall be taken up by the Employer and returned to the Union when the applicant is put to work. It is further understood that such person must become a member of the local union within ten (10) days after his employment, and that the local union will not unreasonably refuse to accept such person as a member]<sup>1</sup>

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<sup>1</sup>Matter in brackets is modified by Section 1 of the Supplementary Emergency Agreement. See Page 35.

Board's Exhibit No. 4—(Continued)

(b) The following rules and practices shall govern in carrying out the foregoing provisions of this Section relating to preferential employment and to hiring new employees:

(1) A central authority, responsible for hiring and firing, shall be established and maintained in each plant of the employer which, under Section 2 hereof, is subject to the provisions of this agreement. Such plants shall be known as "member plants". Each member plant shall furnish the appropriate local union and the California Processors and Growers, Inc., with the name of the person assigned by such member plant to the responsibility of acting as such central authority.

The person assigned to the responsibility of acting as such central authority shall have full authority for hiring and firing and shall be available at all proper times to carry out the purposes of this agreement, and the Employer agrees that the person so assigned shall not have conflicting duties which will interfere with his availability.

(2) At the beginning of the operating season for processing perishable products, whether fruits or vegetables, and upon the resumption of operations during such operating season after any shut down lasting two weeks or more, the respective member plants of the Employer will give the local union office writ-



## Board's Exhibit No. 4—(Continued)

ten notice of beginning or resuming operation equivalent in time to that given to registered workers on the seniority list of such plants, and at least 48 hours before such operations start, provided such information is available to the Employer in time to fulfill this requirement. In case of a shut down of less than two weeks, the local union office will be given the same length of notice of resumption of work as that given to employees of the plant concerned. Information concerning the probable or actual termination of any operating season, and of shut downs for substantial periods of time during such season, will be furnished to the local Union by the Employer when and to the extent that such information is available. In the event that an Employer gives notice that no further processing operations are to be undertaken after the completion of operations on any particular product in a given season, and employees are thereafter laid off for lack of work, any such employees having seniority who are subsequently recalled to work in said plant during said season on account of the resumption of processing operations, and who fail to report, shall not lose their seniority rights as provided in 9 (h) hereof, but shall be deemed to have a reasonable excuse for such failure to report.

(3) During the operating season, and at the beginning of each work shift or day, the local



## Board's Exhibit No. 4—(Continued)

union undertakes to have available, at member plant subject to this agreement, sufficient qualified members of the appropriate local union to fill normal vacancies. If such members are not available at such plants, other persons may be hired as herein provided.

(4) During any day or shift, if there is an increase in volume of work which necessitates the hiring of five or more additional employees, the local union will be given at least two hours' notice of such need, to enable said union to make available sufficient qualified local union members, before other persons are hired as herein provided. To aid in the practical application of this provision and to avoid unnecessary calls at night, the local union will furnish the appropriate central hiring authority, in plants operating night shifts, with a list of currently available local union members whenever possible to do so.

The foregoing procedure shall apply during the operating season for processing perishable products, whether fruits or vegetables, and shall likewise apply during the non-processing season with the exception that during such portion of the year the procedure shall apply to the hiring of any or all additional employees, rather than to "five or more additional employees" as provided during the processing season.

## Board's Exhibit No. 4—(Continued)

(5) Each local union will provide a practical method for receiving notices herein provided, and Employer will be released from obligation under these rules if notice is given but not availed of by the local union concerned, or if no one is reasonably available to receive notice.

(6) When hiring "new employees" (as defined in Section 3 (a) hereof) if qualified members of the appropriate local union are not available, the Employer will require applicants for work to follow the procedure described in Section 3 (a) hereof before being put to work, and will advise such applicants of the provision of this Section requiring affiliation with said union within ten (10) days after actual employment. The local union agrees to have a representative available for receiving union applications at times designated by the member plant central hiring authority for employing new workers, and the local union agrees to assume responsibility for completing the matter of subsequent affiliation by such new workers as members of the Union.

\* \* \*

Section 8. Adjustment of Grievances. Grievances arising in any plant covered by this contract will be reported in writing to the shop committee and/or local business agent. If no satisfactory settlement can be reached with the plant management, the Union, through its Executive Board, will turn over the matter to the Adjustment Board herein-after provided.

## Board's Exhibit No. 4—(Continued)

The Employer shall have an equal right to present grievances to the Shop Committee, and/or local business agent, and if adjustment through the local union fails, to present any unsettled matters to the Central Adjustment Board.

A Central Adjustment Board will be set up promptly with the signing of this agreement. The members of this Board will be composed of six (6) Business Agents to be elected by the California State Council of Cannery Unions, four (4) of which are to be regulars and two (2) to act as alternates. There shall be at least one (1) woman union representative serving on the Adjustment Board at all times. The California Processors and Growers, Inc., will set up a committee of like number to act with the Union committee. Any disputes or grievances that are referred to it as herein provided shall be decided by the Central Adjustment Board, and the decision of that Board shall be final and binding on all parties concerned. The Adjustment Board must meet within three (3) days after being notified. In the event that this committee becomes deadlocked within three (3) days after meeting, then an outside person, mutually satisfactory, shall be called in to make the final decision. In any event, a final decision shall be made within nine (9) days after the original reference.

Nothing in this agreement shall be deemed to limit the right of the Employer to discharge an employee for cause, provided, however, that if an employee

## Board's Exhibit No. 4—(Continued)

claims to have been unjustly discharged, suspended or discriminated against in any manner during the life of this agreement his or her case shall be taken up by the employee with the Shop Committee and/or Business Agent within twenty-four (24) hours. If upon investigation the matter is not thus disposed of, the case may be referred to the executive committee of the Union, and an official of the Company; provided that written notice of such appeal shall be delivered forthwith by the appealing party to the other party. If these parties are unable to agree, the case may be appealed within forty-eight (48) hours after notice is given to the employee that no adjustment has been made. The appeal shall be to the Adjustment Board hereinabove provided for in the same manner and with the same effect as set forth for the adjustment of other matters provided in this section. In case a discharge is found to be unjustifiable by the Adjustment Board, the Board may order payment for lost time or reinstatement with or without payment for lost time. In cases of demotion and discharge of employees on the seniority lists for lack of qualifications or ability to perform a job, the Employer will notify the Union before action is taken, whenever time and circumstances permit.

In addition to the power to adjust grievances referred to it by local unions or the Employer as hereinabove provided, and the determination of appeals in cases of contested discharge, the Adjustment Board shall have the power and responsibility to investigate and determine all matters arising under

## Board's Exhibit No. 4—(Continued)

Section 3 (a) hereof relating to the refusal of union members to work with non-union employees. In all such cases notice of the existence and nature of such dispute shall be submitted in writing to California Processors and Growers, Inc., by the local union, in addition to presentation to the Shop Committee and/or local business agent as hereinabove provided.

The specific provisions of this section shall not be construed to limit the kind of grievances that may be submitted for adjustment, nor shall the provisions of Section 15 (d) hereof be construed as a limitation of power.

In addition to meetings called to consider specific disputes as herein provided, the Central Adjustment Board shall meet at least once a month, or at other times determined by mutual agreement of the members thereof, for the purpose of considering any matters, in addition to the adjustment of grievances presented by any party hereto, that may relate to the interpretation or administration of the provisions of this agreement. All decisions of said Board in adjusting grievances, and all determinations of said Board relating to the interpretation or administration of this agreement shall be reduced to writing and shall be sent to each local union and to each Employer, party to this agreement. Adjustments or interpretations made in settlement of local disputes prior to submission to the Board shall not be binding upon the Central Board, but any adjustment or interpretation made by the Central Board shall be binding on all parties hereto.

## Board's Exhibit No. 4—(Continued)

Nothing in this section shall be construed to empower the Central Adjustment Board to change, modify or amend the provisions of this agreement.

It is further understood that no member of the Central Adjustment Board will act as a Board member in cases concerning his own company, or his own local union, as the case may be.

Any expense voted by this Board will be borne equally by both parties to this agreement.

Pending decision of this Board, there shall be no cessation of work by the employees.

## Section 9. Seniority.

(a) A seniority list shall be prepared for each plant, party to this agreement, and said list shall be prepared and presented to the appropriate local union within thirty (30) days after the signing of this agreement and thereafter said list shall be prepared and submitted to said Union within 30 days after the effective date of the contract in each succeeding year. Upon submission of said list to the local union, a copy or copies shall be posted by the Employer in a conspicuous place in the cannery concerned for inspection by employees, together with a notice that any requests for correction or modification of said list by employees or the local union must be made within a specified period of time. Such period of time, and similar periods for subsequent determination of seasonal lists, shall be fixed by mutual agreement between the Employer and the local union, or if no agreement is reached, by the Central Adjust-



## Board's Exhibit No. 4—(Continued)

ment Board. After such notice, and the expiration of said period, no requests for change or modification of said lists will be considered. Said list shall be based on the beginning date, as accurately as can be determined, of continuous regular employment or consecutive seasonal employment, as the case may be, as such employment is hereinafter defined. All employees covered by this agreement and referred to in Section 4 (a) hereof shall be named on said list.

(b) All jobs shall be filled and all rehiring shall be from the regular list in the order of seniority, and thereafter all vacancies in positions of regular and seasonal employment shall be filled from the seasonal list in the same order, provided that the person or persons having seniority are capable of performing in a manner satisfactory to the Employer the work which is available, provided, however, that a right of appeal shall exist as provided in Section 8 hereof. Similarly, lay-offs for lack of work shall be made in the reverse order of seniority, due consideration being given to the ability of the employee laid off and of the remaining employees to perform the work available in a manner satisfactory to the Employer, subject to the right of appeal as provided in Section 8 hereof.

In hiring new employees, the procedure and preferences provided in Section 3 hereof shall be followed, with the understanding that after the provisions of said Section 3 have been fulfilled, local residents will be given prior consideration in new employment.



## Board's Exhibit No. 4—(Continued)

(c) The relative position of said workers on said list in the respective groups hereinafter described shall be determined by length of service computed in the manner herein set forth.

(d) In each plant employees shall be divided in two (2) groups as follows: Regular employees and seasonal employees, all to be listed on one seniority roster for said plant.

(e) Regular employees are those who have worked in a given plant at least forty (40) weeks out of the fifty-two (52) weeks during the preceding calendar year.

Seasonal employees are those other than regular employees, who worked in a given plant at least sixty per cent (60%) of the total number of operating days of said plant during the previous season.

An operating day is hereby defined as either any day during which perishable products are being processed when not less than twenty per cent (20%) of the average number of employees on the plant payroll during the week of greatest employment during the season are at work, or any day during which not less than twenty per cent (20%) of the average total daily payroll during the week of greatest employment during the season is paid out.

(f) Any person on the regular or seasonal seniority list of a given plant at the beginning of the 1940 season shall be entitled to credit for prior service for seniority purposes on the following basis:

(1) For regular employees: one year's

## Board's Exhibit No. 4—(Continued)

credit for each consecutive year prior to 1940, back to and including 1937, during which such employee worked forty (40) weeks or more in such plant during a calendar year; and one year's credit for each consecutive year prior to 1937 that such employee worked any portion of a calendar year in such plant.

(2) For seasonal employees: one year's credit for each consecutive year prior to 1940, back to and including 1937, during which such employee worked sixty per cent (60%) of the total actual operating days in such plant during a calendar year, as defined in the 1940 agreement; and one year's credit for each consecutive year prior to 1937 that such employee worked any portion of a calendar year in such plant.

Absence from the plant payroll for a total calendar year, except as provided in Section 9 (i) hereof, shall prevent the crediting of that year or any prior year for purposes of seniority hereunder.

Any employee, whether regular or seasonal, who was on the seniority list of a given plant at the beginning of the 1940 season shall not thereafter lose his or her seniority status for failure to qualify by working forty (40) weeks, if a regular, or sixty per cent (60%) of the operating days as herein defined, if a seasonal worker, provided such failure is due to lack of available work, which such worker is qualified to perform, unless such employee shall be off the payroll

## Board's Exhibit No. 4—(Continued)

of such plant for a total calendar year, or has been on the payroll of such plant for two consecutive years but without qualifying for seniority in either year. In the event any employee fails to qualify in a given year, but thereafter does qualify for seniority as herein provided, such employee upon such subsequent qualification shall be entitled to credit for the intervening year or years as herein specified, but not to exceed two consecutive years.

If a regular employee loses his place on the regular seniority list in the manner hereinabove set forth, he may claim a place on the seasonal list, not later than the following year, and will take his appropriate relative place on that list in accordance with his seasonal seniority. If a seasonal employee gains a place on the regular list by qualifying length of employment, he shall not lose his seniority rating on the seasonal list, but may reclaim this seasonal standing if laid off for lack of work as a regular employee.

(g) Any employee discharged for cause, or voluntarily quitting his or her employment, except in the case of layoff for lack of work, or leave of absence with written consent, as provided in Section 9 (i), shall lose all seniority rights.

(h) Any person on the seniority list who is reasonably notified to report for work, and who fails to do so within a period of forty-eight (48) hours shall lose all seniority rights, provided, however, that if said failure to report was excusable for reasons satisfactory to the Union and the Employer, such person

## Board's Exhibit No. 4—(Continued)

shall lose only the immediate employment offered and shall be continued in his or her relative place on the seniority list. The employer will furnish the local union with a list of the persons who have failed to report for work after notification.

(i) When employees in plants covered by this contract are obliged to leave their cannery jobs because of acceptance by them of official positions with the Union, their seniority shall not be lost during such absence, but shall accumulate during such period in the same manner as if they remained employed in the status held by them before leaving, provided, however, that upon termination of their union position they notify the Employer within 30 days of such termination and shall then be eligible for reinstatement in accordance with the provision of Section 9

(b) hereof. All present officials of local unions, parties to this contract, shall be protected in their seniority status retroactively to cover the period of their incumbency as such union officials. Leaves of absence without loss of seniority for any other cause shall be granted only with the written approval of both Employer and the Union. Leaves of absence shall be granted for just cause, and approval shall not be withheld arbitrarily by the Employer or the Union. These provisions requiring written leave of absence shall not apply to absences, granted by the Employer for sickness or similar reasons, of less than ten (10) days duration.

(j) Notwithstanding the provisions of this section relating to seniority, when it is necessary to em-

## Board's Exhibit No. 4—(Continued)

ploy persons to perform supervisory duties or duties requiring special training or experience, and in the Employer's judgment it is necessary to select a person regardless of seniority to fill such position, such person may be employed and assigned to any place of employment without regard to the seniority list, provided he is compensated at a wage higher than the minimum wage established for Bracket IV herein. Such employees shall receive such wage for any duties performed by them, whether in lower classification or not, so long as they are separately listed and employed without regard to the seniority list as herein provided. If persons named to such positions have a seniority rating based on prior service, they shall not lose said rating by reason of being separately listed, but may reclaim their seniority standing if laid off for lack of work on the type of assignment described herein. If such persons have no seniority rating based on prior service, however, they shall gain no seniority rights by reason of their employment under the provisions of this section. A copy of the lists of all such employees shall be furnished to the local union concerned, to the California State Council of Cannery Unions and to the California Processors and Growers, Inc. The Employer's judgment shall not be exercised arbitrarily, and any disputes arising hereunder shall be referred to the Central Adjustment Board as provided in Section 8 hereof.

(k) Any modifications to Section 9 shall be by mutual consent of the local union and an employer-canner party of this agreement. Any such modifica-



## Board's Exhibit No. 4—(Continued)

tion shall be reduced to writing and a copy filed with the California Processors and Growers, Inc., and with the California State Council of Cannery Unions.

## Section 10. Students.

When an employer desires to put persons to work for the purpose of training them in a cannery job and not for the purpose of having them become permanent employees at such job, he may, without regard to the principle of seniority, put such persons to work, but there shall not be more than one (1) such person per two hundred (200) employees or fraction thereof. Students will not be admitted to union membership and shall gain no seniority rights. The application of this section by the Employer shall be subject to review by the Adjustment Board as provided in Section 8 hereof. A list of students shall be furnished to the local union.

## Section 11. Visits by Union Officials.

The Employer agrees to admit to its plant at all reasonable times any authorized representative, or representatives, of the Union for the purpose of ascertaining whether or not this agreement is being observed by the parties hereto, and to assist in adjusting grievances. A duly authorized agent of the local union will be permitted to collect dues in the plant, and the Employer hereby agrees to cooperate in arranging for visits for this purpose, to provide a suitable place for receiving dues, and to name two (2) persons in the plant, each of whom shall have authority to make arrangements for such visits.

## Board's Exhibit No. 4—(Continued)

These privileges shall be so exercised that no time is lost unnecessarily to the Employer, and the Union representatives shall advise Employer of such visits by notifying the plant office before or at the time of entering the plant. The privileges herein granted may be suspended for any willful violation of the provisions of this section, and such violation may be referred to the Adjustment Board as provided in Section 8.

## Section 12. Vacation Period.

Any employee who has been on the payroll of a company for forty (40) weeks and has worked sixteen hundred (1600) straight time hours, or more, during the current period of twelve (12) consecutive months from and after the date or anniversary date of his employment shall receive one (1) week's vacation with pay, said vacation period to be taken prior to the beginning of the next processing season, or at other times by mutual consent. Vacation pay shall be based on a forty (40) hour work week at straight time.<sup>5</sup>

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<sup>5</sup>“The current union agreement provides (Section 12) that ‘Vacation pay shall be based on a forty (40) hour week at straight time.’ This language contemplates that such vacation pay should be the normal straight time compensation of the individual concerned, and consequently, when a worker has been assigned to more than one classification and received different rates of pay during the qualifying period, his vacation rate should be his average straight time rate over such period, rather than that in effect immediately prior to the vacation.”—Central Adjustment Board Ruling 5/15/42.



## Board's Exhibit No. 4—(Continued)

## Section 13. Compliance.

In the event of a violation of any part of the agreement by an employer, party to this agreement, such violation shall be immediately brought before the Central Adjusting Board, herein provided for, and the ruling handed down by said Board and/or ninth disinterested person, if such person is required, shall be final and binding upon the parties. If such employer does not abide by that ruling it shall then be necessary for the California Processors and Growers, Inc., to immediately suspend that employer from that Association and no assistance will be given him by that body against the action deemed advisable and necessary by the Union, because of the refusal of the employer to accept the ruling handed down by the Central Adjustment Board and/or the ninth disinterested person, if such person is called into the case.

Likewise, in the event of a violation of any part of this agreement by the individual union in the plant or plants of the Employer, such violation will be immediately brought before the Central Adjustment Board, provided herein, and the ruling handed down by such Board and/or disinterested party shall be final and binding upon the parties. If such individual union refuses to abide by the ruling handed down, it shall then be necessary to immediately recommend to the American Federation of Labor that that individual union shall not receive official

## Board's Exhibit No. 4—(Continued)

recognition from the American Federation of Labor and the California State Council of Cannery Unions, and thereby prevent that individual union from receiving any assistance from those bodies until such time as the individual union agrees to comply with the ruling handed down by the Central Adjustment Board and/or the ninth disinterested person.

## Section 14. Conflicting Agreements.

In the event that the American Federation of Labor or the California State Council of Cannery Unions, or any of the local unions, parties hereto, make any agreement with any employer, within the jurisdiction of any individual local union, party to this agreement, as such jurisdiction now exists, the Employer hereunder shall be entitled, within the area included under the jurisdiction of any local union which is a party hereto, to the benefit of any terms contained in such agreement which may be more favorable to the Employer thereunder than those set forth herein, notwithstanding the provisions of this contract. A copy of all such agreements shall be filed with the California State Council of Cannery Unions, and the California Processors and Growers, Inc., at the time they become effective.

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## Board's Exhibit No. 4—(Continued)

## Section 18. Term of Agreement.

The term of this agreement shall be until March 1, 1945, provided, however, that either party may, by written notice given fifteen (15) days prior to December 31, 1943, or fifteen (15) days prior to December 31st of any subsequent year during the life of this agreement, reopen the same for the adjustment of wages, hours, and working conditions. Any changes desired shall be reduced to writing and delivered to the other party prior to, and negotiations must start not later than, the first business day in January next following receipt of such written notice and such negotiations must be completed before March 1st of same year. In the event that this agreement shall not have been modified previously, and in the event that no notice shall be given by either party to the other, as hereinabove provided, then the terms of this agreement shall automatically be extended for an additional period of one (1) year, and thereafter shall automatically be extended from year to year unless one of the parties shall give notice to the other of a desire to modify said agreement, at least fifteen (15) days prior to December 31st in any following year of the life of this agreement. In the event that such notice is given prior to December 31st as hereinabove provided, and negotiations are begun, the terms of the agreement as of the date of such notice shall remain in full force and effect during and until the following March 1st, and if negotiations continue beyond such date by mutual agreement, any agreement reached thereafter shall be

Board's Exhibit No. 4—(Continued)  
effective retroactively to said March 1st. In the event no agreement is reached by said March 1st, however, either party may give notice to the other of the termination of negotiations and thereby cancel said negotiations and this agreement.

In Witness Whereof the parties hereto have set their hands and seals this 10th day of July, 1943.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.

By L. E. NEEL,  
President.

WILLIAM E. YEOMANS,  
Secretary.

CALIFORNIA STATE  
COUNCIL OF CANNERY  
UNIONS

By L. J. HILL,  
President,  
HAL P. ANGUS,  
Secretary.

Witnesses:

OMAR HOSKINS,  
U. S. Commissioner of  
Conciliation.

GEORGE L. GOOGE,  
Special Representative of American Federation of  
Labor.

J. PAUL ST. SURE,  
Attorney for California Processors and Growers,  
Inc.

Board's Exhibit No. 4—(Continued)

Additional Wage Provisions.

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4. The provisions set forth herein shall be effective as of March 1, 1943, as a master contract and shall operate as a direct agreement between individual employers and individual local unions as to named plants and unions upon the execution of certificates in the manner and form as set forth in Section 2 of the collective bargaining agreement of June 10, 1941, and shall continue in full force and effect thereafter in accordance with the provisions of Section 18 of the collective bargaining agreement.

5. It is expressly understood that in the event war-time conditions or restrictions result to the canning industry by governmental order or action, whether directly or indirectly, so as to interfere with or interrupt the normal operations of the canneries covered by this agreement or the normal conditions of work in such canneries, then, notwithstanding the provisions of the collective bargaining agreement herein described, the Employer shall not be liable for any penalty or default during or as a result of such interference, interruption or restriction and similarly, the employees of the Union shall not be liable for any additional obligation to the Employer during or as a result of such interference, interruption or restriction. It is the intent of the parties hereto to provide an express waiver of contractual penalties to accomplish a mutual assumption of losses of time and production resulting from such

## Board's Exhibit No. 4—(Continued)

government orders or actions, and it is further agreed that all reasonable efforts will be made to reach a mutual understanding as to any unforeseen operating or working problems that may result from other war-time conditions not covered by this waiver.

In Witness Whereof the parties hereto have set their hands and seals this 10th day of July, 1943.

CALIFORNIA STATE  
COUNCIL OF CANNERY  
UNIONS

By L. J. HILL,  
President.

HAL P. ANGUS,  
Secretary.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.

By WILLIAM E. YEOMANS,  
Secretary.

Supplementary Emergency Agreement

This memorandum of agreement made and entered into this 10th day of July, 1943, by and between California Processors and Growers, Inc., as collective bargaining agent for those canning companies more particularly described in that certain collective bargaining agreement executed on the 10th day of June, 1941, as amended January 26,



## Board's Exhibit No. 4—(Continued)

1942, and The American Federation of Labor and California State Council of Cannery Unions, as collective bargaining agent for those cannery workers' unions more particularly described in said collective bargaining agreement,

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

During the cannery operating season of 1943, in order to alleviate the critical manpower shortage existing in California and to promote the continued operation of canneries and the essential production of food, the following emergency provision shall be in effect as modifications of the collective bargaining agreement executed this day:

1. The final three sentences of the second paragraph of Section 3 (a) are amended to read as follows:

“If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union or obtain an ‘Emergency’ card from the local union before being put to work. An emergency worker shall not be required to complete his affiliation with the local union except as hereinafter provided, but shall have the right to do so at any time if he so desires, in which event any payments therefore made to the Union by such emergency worker shall be credited by the Union as payment on account of the regular



## Board's Exhibit No. 4—(Continued)

initiation fee of such person. An emergency worker shall not acquire seniority rights and shall not continue his status as an emergency worker beyond the period of the operating season. If an emergency worker completes his affiliation with the Union, he shall acquire seniority from the date of original employment. Upon filing application for union membership, or obtaining an emergency card, the person to be employed shall receive from the Union a written statement evidencing the fact, which statement shall be taken up by the Employer and returned to the Union when the person is put to work. It is further understood that emergency workers shall obtain renewals of their status from week to week, and that persons filing applications for membership in the local union shall complete their affiliation within ten (10) days after employment. The local union agrees that it will not unreasonably refuse to grant emergency status to any person; and that it will not unreasonably refuse to accept any applicant as a member."

2. It is further understood and agreed that the following provisions shall govern emergency workers during the 1943 cannery operating season:

New employees will be required to present a clearance from the Union before being put to

## Board's Exhibit No. 4—(Continued)

work. In the case of applicants for regular union membership, the regular contract provisions will apply.

In the case of emergency workers, such workers will be required to present a receipt showing advance payment of 50c to cover the current week. Such receipt should indicate that no refund will be made if the employee works less than one week. The union undertakes to issue these 50c receipts at times when new employees are being hired, as now provided for clearances in the case of applicants for membership.

At the time of employment of emergency workers, such workers will be informed by the Employer that the contract provides that they must obtain new receipts from week to week.

After the initial employment of emergency workers, the Employer will undertake to investigate their status, week by week, to ascertain whether or not they have a receipt for the current week's fee, paid in advance. In order to facilitate the making of this investigation, the Union should furnish the Employer, at least once a week, a list of all emergency workers who have made the required payment for the current week, and a list of those who have failed to do so.

The employers will not provide a check off of weekly payments, nor undertake to make col-

## Board's Exhibit No. 4—(Continued)

lections, but they will observe in good faith the requirement that emergency workers must obtain renewals of their status from week to week in order to continue at work.

The specific details of receipt forms and agreements as to dates for securing lists shall be worked out locally, and if any disputes arise, they shall be submitted to the special committee hereinafter provided.

Present or former union members will not be qualified to come within the category of emergency workers, but other new employees shall have the option of becoming either regular members or emergency workers, provided, however, that after working twenty-four (24) days, or after working all regular shifts whenever work is available for four (4) payroll periods (whichever is the lesser total of working days) emergency workers will be deemed to be in the same category as other cannery workers and will be required to become members of the Union, unless they are employed elsewhere and are doing cannery work in addition to their regular employment.

Members of the armed forces shall be exempt from the payment of any fees or dues, it being understood that members of the armed forces may be employed in cases where there is a mutual determination that a shortage of civilian workers exists, but only when their employ-

## Board's Exhibit No. 4—(Continued)

ment will not interfere with the customary employment and regular engagement of civilians.

3. It is further understood and agreed that in order to further the purposes and administration of this Supplementary Emergency Agreement, a Special Committee is hereby established as follows:

A Special Cominittee composed of (1) the representatives of The American Federation of Labor assigned by President William Green to assist California cannery workers' unions, (2) the Secretary-Treasurer of the California State Council of Cannery Unions, (3) the labor relations counsel of the California Processors and Growers, Inc., and (4) the Secretary of the California Processors and Growers, Inc., shall function during the 1943 cannery operating season. If any differences arise concerning the operation or administration of the provisions of this Supplementary Emergency Agreement, or if any manpower emergencies arise which threaten the continued operation of the canneries during the term of said agreement, such differences and such emergency problems, at the request of either party hereto, shall be referred to said Special Committee, and said committee shall have the responsibility and the exclusive authority to make all necessary adjust-

Board's Exhibit No. 4—(Continued)  
ments or decisions to settle such differences or  
to meet such emergencies.

In Witness Whereof the parties hereto have set  
their hands and seals this 10th day of July, 1943.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.

By L. E. NEEL,  
President,  
And WILLIAM E. YEOMANS,  
Secretary.

CALIFORNIA STATE  
COUNCIL OF CANNERY  
UNIONS

By L. J. HILL,  
President,  
And HAL P. ANGUS,  
Secretary.

Witnesses:

OMAR HOSKINS,  
U. S. Commissioner of  
Conciliation.

GEORGE L. GOOGE,  
Special Representative of American Federation of  
Labor.

J. PAUL ST. SURE,  
Attorney for California Processors and Growers,  
Inc.

Board's Exhibit No. 4—(Continued)

This is to certify that A. F. of L. Cannery Workers Union, No....., .....County, California, hereby represents that a majority of the employees in ..... Plant of .....located at ....., are members of said union and individually for themselves and as a unit have designated said union as their representative for collective bargaining.

The said union hereby adopts that certain agreement made and entered into on the 10th day of July, 1943 by and between California Processors and Growers, Inc., for and on behalf of certain canning companies and The American Federation of Labor, and California State Council of Cannery Unions for and on behalf of certain cannery workers' unions, and promises to be bound thereby.

By authority of the Union.

CANNERY WORKERS

UNION, .....COUNTY.....

NO.....

By .....

President.

By .....

Secretary.

Dated:....., 1943

## Board's Exhibit No. 4—(Continued)

This is to certify that upon the representation of Cannery Workers Union,..... County, No....., that a majority of the employees in..... Plant of ..... located at ..... are members of said union and have designated said union as their representative for collective bargaining, the undersigned hereby adopts that certain agreement made and entered into as of the 10th day of July, 1943 by and between California Processors and Growers, Inc., for and on behalf of certain canning companies and The American Federation of Labor and California State Council of Cannery Unions for and on behalf of certain cannery workers' unions, and promises to be bound thereby.

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By .....  
Authorized Officer.

Dated:....., 1943.



[Endorsed]: No. 11693. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. C. W. Hume Company and California Processors & Growers, Inc., Respondents. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L. and California State Council of Cannery Unions, A.F.L., Intervenor. Transcript of Record. Upon petition for enforcement of an order of the National Labor Relations Board.

Filed July 23, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

